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HISTORY

OF THE

BENCH AND BAR

OF

CALIFORNIA

BEING

Biographies of many Remarkable Men, a Store of Humorous and Pathetic Recollections, Accounts of Important Legislation and Extraordinary Cases,

COMPREHENDING

THE JUDICIAL HISTORY OF THE STATE

EDITED BY

OSCAR T. SHUCK,

Editor of "Col. E. D. Baker's Masterpieces", and other Works.

Los Angeles, Cal.

THE COMMERCIAL PRINTING HOUSE

1901

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THIS HISTORY

IS

REGARDFULLY INSCRIBED

TO

Hon. John G. McCullough, LL. D.,

NOW A DISTINGUISHED PUBLIC MAN OF VERMONT,

REMEMBERED AS

A LIGHT OF THE EARLY BAR OF CALIFORNIA,

AND FOR HIS BRILLIANT ADMINISTRATION

OF THE OFFICE OF

ATTORNEY-GENERAL, 1863-1867.

PREFACE

To the Hon. M. M. Miller, of the San Francisco Bar, belongs the credit of originating the idea of presenting such a "History of the Bench and Bar of California" for the first half century as the present volume offers. It was early in the year 1899, that this conception became developed in the mind of Mr. Miller, who thereupon enlisted the co-operation of the enterprising publishing house of Los Angeles, whose name appears on the title page of this work. Much material was gathered and the plan was pursued by its originator, until the success of the undertaking was assured, through the favorable reception given to the projected work by the profession. Then Mr. Miller, under alluring inducements held out to him to settle in Honolulu and take part in the transformation of the Hawaiian Islands into a portion of the American Union, was led in the spring of 1900, to resume his legal practice, and thereupon disposed of his interest under an advantageous sale to the publisher. The undersigned author of the only like work then extant, that entitled, "Bench and Bar in California," issued in 1889, was then engaged to edit the present work. In the twelve months which have since elapsed, the Editor has given, substantially, all of his time and endeavor to make the book answer to its aspiring title. The historical articles, which make up a large part of the volume, have familiar signatures,—those of experienced and devoted men who command the admiration of the bar, and of the judiciary as well, for the learning and dignity which they have brought to their calling. Their valued contributions belong not only to the story of the bar, but to that of the State. The Publisher and Editor join in acknowledging their great obligation to these fruitful minds, and now give into the hands of a great profession a most engaging and instructive History.

—*OSCAR T. SHUCK.*

San Francisco, March 25th, 1901.

PREFACE

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INTRODUCTORY: HISTORICAL VIEW OF THE JUDICIARY SYSTEM OF CALIFORNIA

HENRY H. REID

Henry H. Reid

INTRODUCTORY: HISTORICAL VIEW of the JUDICIARY SYSTEM of CALIFORNIA

What could be more interesting and instructive than to trace the origin and development of the judicial system of a great modern State? And among the "American Commonwealths"—of whose institutions that eminent scholar and acute observer, Professor James Bryce, has written with a knowledge and ability not elsewhere equalled—what state has a history more attractive and of more value and importance than that of California?

The philosophic and historic truth, that in order to understand the present we must study the past, finds no stronger confirmation than in the realm of jurisprudence. But we must be circumspect in our search for the beginnings of things, lest we find ourselves following the example of Diedrich Knickerbocker, in his "History of New York from the Beginning of the World to the End of the Dutch Dynasty," in which the author, having been "bred to the law," and giving due regard to precedents, historical and otherwise, devotes the five chapters constituting his first book to a history of the world and its cosmogony, with references to the famous navigators, Noah, Columbus, and Captain Lemuel Gulliver, the origin of the aborigines, and the peopling of America. We shall therefore refrain from exploring the vast field of Spanish and Mexican law—based upon the laws of the Romans, as modified by the Canon law—and from describing, except with the utmost brevity, its practical application and administration in California prior to the American occupation in July, 1846.

Shortly after Mexico had won her independence from Spain, the new government formed the two Californias (territories) out of the old Mexican states of Sonora and Sinaloa. The Californias were then made to comprise the sixth judicial circuit of the Mexican Republic, and Alta, or Upper California (our California), was made one of the districts of that circuit. In 1828, a court for the circuit was installed at Rosario, with Jose Joaquin Aviles as judge, but no district court had been organized for Alta California. There was an Ecclesiastical Court, presided over by Padre Jose Sanchez, then president of the missions and *vicario foraneo*, or representative of the Bishop of Sonora.

Under the Mexican law of December 29, 1836, the alcaldes exercised jurisdiction (in civil law nomenclature) over cases of conciliation, oral litigation, and preliminary proceedings, of both civil and criminal nature. There were several attempts to establish a Superior Court, and in June, 1845, the matter of the reorganization and regulation of a superior tribunal of justice was taken up. This was to consist of two judges (*ministers*) and an attorney general (*fiscal*), and to be divided into two chambers.

As to inferior jurisdictions, there was to be in each capital of a *partido* a court of first instance, presided over provisionally by the First Alcalde, where there was an Ayuntamiento (or town council), and elsewhere by a justice of the peace of first nomination.

There was but brief opportunity to test the wisdom of this judicial system by actual practice; for war with the United States quickly followed, resulting in American occupation and annexation.

The transition from the old regime to the new was sudden as well as permanent, and the efficient administration of affairs by the military officials, until the establishment of civil government and formal tribunals for the administration of justice, put to shame the history of high officials in later periods of our national life.

The first of these military governors was Colonel Richard B. Mason, whose administration began on May 31, 1847, and terminated on April 13, 1849. He appears to have been a man of excellent judgment, and, as far as possible, he acted upon the American principle that the military should be subordinate to the civil power. He ordered that cases should be tried by jury—consisting, in civil cases, of six, and in criminal cases, of twelve jurors. As illustrative of his determination that all classes should be equal before the law, Hittell, in his History of California, gives the following account:

"In November, 1847, Father Real, of Santa Clara, was sued before the Alcalde of San Jose, for a breach of contract. In defense, he pleaded that, as an ecclesiastic, he was not amenable to the profane judgment of a civil court. The question being referred to the Governor, the latter (Mason) replied that he did not know what peculiar privileges his Reverence enjoyed, but it was very evident that if he departed from his religious calling as a Catholic priest, and entered into a secular bargain with a citizen, he placed himself upon the same footing with the citizen, and should be required, like everybody else, to comply with his agreement. By this decision, unimportant as it might have appeared, Governor Mason wiped out from California jurisprudence the abuse of clerical privilege, which had grown up as a part of the Civil Law."

Colonel Mason was succeeded as Governor by General Bennet Riley. Judge E. W. McKinstry has observed of this first-class officer, in an address before the Society of California Pioneers, on September 9, 1871, that he "was not too scientific a soldier to fight, and not so much of a constitution-monger as to interfere with the natural course of events. He employed without osten-

tation, and surrendered without delay, such civil powers as were thrust upon him by an extraordinary combination of circumstances."

On June 3, 1849, Governor Riley issued a proclamation for the election of a Superior Court of four judges and a fiscal, a judge of first instance for each district, alcaldes, and justices of the peace. The election took place August 1, 1849, and John W. Geary was chosen first alcalde, receiving all the votes cast in San Francisco, to-wit, 1516. Frank Turk was chosen as second alcalde. Peter H. Burnett was chosen from San Francisco and San Jose as one of the four judges of the Superior Court; Pacificus Ord, Lewis Dent, and Jose M. Covarrubias were the other three. Governor Riley then appointed Frederick Billings as fiscal, or attorney-general, of California. In October, Judges Burnett and Dent resigned. One of Governor Riley's appointments was that of William B. Almond as judge of a special court of first instance, with civil jurisdiction only. Hittell will not be accused of hyperbole when he observes concerning Almond, that "he was what may be called an original character." The historian continues: "He was a man of quick discernment, and, as far as it went, clear judgment. But when he made up his mind, which he often did before he heard any evidence, nothing could change him. He had a sovereign contempt for lawyers' speeches, legal technicalities, learned opinions, and judicial precedents. He had an idea that he could see through a case at a glance, and imagined that he could, with a shake of his head or a wave of his hand, solve questions which would have puzzled a Marshall or a Mansfield."

In the address by Judge McKinstry, from which I have already quoted his opinion of Governor Riley, the speaker gave the following graphic and humorous account of the rough and ready administration of justice at this period, which could hardly be improved upon:

"The immense immigration which followed the discovery of gold brought into conflict two principles of international law. The first is, that a colony from a civilized nation carries with it the laws and usages of the parent state. The second is, that the laws and usages of a conquered country remain in operation until changed by the conqueror. Some parts of California had been long settled and improved, while in much the larger part the Mexican population was so inconsiderable as hardly to constitute an element in the numerical estimate of the whole.

Hence arose a pleasing variety in the modes of determining litigation. In Los Angeles and San Jose there were officials, accomplished, and familiar with the sources of their own beautiful system, and with the Mexican decrees and statutes by which that system had been modified. Elsewhere in the South, a rude justice, fitted to the business and affairs and suited to the tastes of a pastoral people, was dispensed sometimes by a *juez del paz* as dusky as the supreme judge of a reconstructed American state after our Civil War, who was said to be so dark that the whole bar could not enlighten him. In Sacramento, where "Pike county" was once in the ascendant, judgments were rendered according

to the course of the Common Law of England, and the Acts of the Missouri Legislature, while in San Francisco was a wonderful tribunal. Here the Judge of First Instance assumed a jurisdiction unlimited as to parties or subject matter. All was fish that came to his net. His was a court, civil and criminal, taking cognizance of matters spiritual or in probate, matters maritime or in admiralty, matters at common law or in equity, yet always recognizing the rule of the Civil Law as paramount when anybody could tell what *was* the rule of the Civil Law. Towards the last, just thirty minutes were allowed to each trial. Now, in the winter of 1849-50, it rained incessantly four months and a half. In default of jury-room twelve sufferers were not infrequently corralled in the back yard, to find a verdict upon the opening of plaintiff's counsel, or the testimony of the first witness. They generally found it. The clerk's name was Pomeroy, and the judicial opinion ended with the invariable formula, 'Bom., what's our fees?' Yet pioneers have no call to be ashamed of their courts. As a rule, excellent common sense guided their actions, and they gave what was then more desired than elaborate opinions, prompt and decisive judgments."

The practical wisdom shown in the work of the convention which framed the constitution of 1849 has never failed to evoke the wonder as well as the commendation of all who have given due consideration to the abnormal conditions and circumstances under which it was constituted and performed its labors. And not the least valuable and admirable result was that portion of the organic law which provided for the judicial administration of the laws by which the people of California were to be governed.

The judicial department under that constitution consisted of a Supreme Court, District Courts, County Courts, Probate Courts, Justices of the Peace, and such municipal and other inferior courts as the legislature might deem necessary. The Supreme Court was composed of a chief justice and two associate justices, their term of office being six years. The District Courts were given original jurisdiction in law and equity in all civil cases where the amount in dispute exceeded $200, exclusive of interest, and in all criminal cases not otherwise provided for, and in all issues of fact joined in Probate Courts. The first district judges were chosen by the legislature, for a term of two years; their successors to be elected by the people, their terms to be six years. The County Courts were given jurisdiction of cases arising in Justices' Courts, and in such special cases as the legislature might prescribe. They were to exercise no original civil jurisdiction except in such specified cases. The judges of the County Courts—their terms of office four years—were to perform the duties of surrogate or probate judge, and also, with two Justices of the Peace, to hold courts of sessions, with such criminal jurisdiction as the legislature might prescribe.

As authorized by the constitution, the legislature chose as judges of the Supreme Court, S. C. Hastings, chief justice, and Henry A. Lyon and Nathaniel Bennett, associate justices.

On March 30, 1850, after dividing the State into nine judicial districts, the legislature elected the district judges, and on April 5th, after the erection of a Superior Court for San Francisco, they elected three judges for it. The first district judges thus chosen were, O. S. Witherby, for the First District, Henry A. Tefft, Second District, John H. Watson, Third District, Levi Parsons, Fourth District, Charles N. Creaner, Fifth District, James S. Thomas, Sixth District, Robert Hopkins, Seventh District, William R. Turner, Eighth District, and W. Scott Sherwood, Ninth District. The first judges of the Superior Court of San Francisco were P. H. Morse, Chief Judge, Hugh C. Murray and James Caleb Smith, associates.

By the amendments to the constitution of 1849, ratified September 3, 1862, the Supreme Court was reorganized by increasing its members from three to five, and extending their term of office from six to ten years, with appellate jurisdiction in all cases in equity, all cases at law, involving title to real estate, cases in which the demand or value of the property in controversy amounted to $300, cases arising in probate courts and also in criminal cases amounting to felony on questions of law alone. Power was also given to it to issue writs of mandamus, certiorari, prohibition and habeas corpus. By the constitution of 1849, the Supreme Court was not given any original jurisdiction. The State was divided into fourteen judicial districts, with power in the legislature to make such alterations as the public good might require; such alterations could not be made, however, except by a two-thirds vote of all the members elected to both houses of the legislature. In addition to their jurisdiction in cases of law and equity, the District Courts, and the judges thereof, were authorized to issue writs of habeas corpus on behalf of any person held in actual custody in their respective districts.

The County Courts were given original jurisdiction in cases of forcible entry and detainer, insolvency, actions to prevent or abate nuisances, special cases and proceedings, not otherwise provided for, and such criminal jurisdiction as the legislature might prescribe. They also had appellate jurisdiction in cases arising in justices and other inferior courts. The county judges were also to hold Probate Courts and perform such duties as Probate Judges as might be prescribed by law. Power was given them to issue writs of habeas corpus in their respective counties. In neither the original constitution nor by the amendments were the salaries of the judges fixed. Their salaries were to be fixed, from time to time by the legislature, with the proviso that the compensation should not be increased nor diminished during the term for which the judges had been elected.

At the election of judges, after the amendments to the constitution of 1849, Silas W. Sanderson, Lorenzo Sawyer, John Currey, Augustus L. Rhodes, and Oscar L. Shafter were chosen, as justices of the reorganized Supreme Court. Of these able and eminent jurists, but two survive. Judge Currey remains a notable figure—although merely as a private citizen—in San Francisco, where he has resided since his retirement from public office. Judge

Rhodes is now (1900) by the appointment of the Governor, and with the approval of every lawyer in the State, a judge of the Superior Court of Santa Clara County, and has been nominated and will be elected by both of the great political parties of the county—a tribute not less honorable to those who pay it, than to him to whom it is paid.

For a period of seventeen years, justice was administered in our courts, as thus constituted, by a body of judges, the majority of whom were honest and capable and some of whom achieved well merited fame. Like all other human institutions, our judicial system developed some objectionable features in its actual working and some changes were imperatively demanded. Opinions were variant as to how and how far the changes should be effected; but the view which generally obtained among the members of the bar was against any radical reconstruction of the judicial system. But when the Constitutional Convention met in 1879 it was found that a majority of its members were in favor of as many "brand new" provisions in the constitution as could possibly be secured, and the judiciary was dealt with accordingly. The Supreme Court was still further enlarged in membership, seven judges instead of five, which has since been (actually if not nominally) extended by the appointment of five commissioners, who examine and give written opinions upon cases referred to them by the Court.

Their terms were also extended to twelve years and their salaries fixed at $6000 a year. The Court is divided into two departments—but also sits "in banc," to consider such cases as are deemed of sufficient importance to justify it. The concurrence of all the judges sitting in a department is necessary to pronounce a judgment therein; and in banc, the concurrence of four judges is necessary. All decisions of the Court, in banc or in department, are required to be in writing, stating the grounds of the decision. Complaints having been made because of delays in the decision of causes under the old system, the framers of the new constitution endeavored to correct the evil by providing that no judge of a Superior Court nor of the Supreme Court, shall after the first day of July, 1880, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days.

Shakespeare in Hamlet's soliloquy, where he enumerates some of the poignant ills which affect humanity, speaks of the "law's delays"—and every lawyer knows the chapter of Magna Charta where King John undertook that he would neither sell, nor deny, nor defer right or justice to any one—*Nulli vendemus, nulli negabimus, aut differemus, rectum vel justiciam.* The intention of the constitution makers was therefore praiseworthy—but it may be questioned whether the means they adopted were really efficacious. They attempted to stimulate promptitude of decision by making the payment of salaries dependent thereon; but at the same time, they greatly increased the difficulty in the way of rendering judgment promptly, by requiring that reasons

in writing be given in each case for the conclusion at which the court has arrived.

No one will deny that there were just causes for complaint under the old system by reason of unreasonable delays in deciding cases; but the delays were usually in the trial courts. As to them, the salary provision of the new constitution was probably wise, for they are not required to give reasons for their decisions. But as to the requirement that the Supreme Court should give the grounds of their decision in every case, I think there can be but one opinion, that it is unwise in the extreme. An attempt was made by the legislature of 1854 to compel appellate courts to give in writing the reasons for their decisions, and upon the question as to the policy of such a requirement Judge Field, speaking for the Supreme Court, said, that, "the practice of giving reasons in writing, for judgments, has grown into use in modern times. Commonly, the reasons, if any were given, were generally stated orally, by the judges, and taken down by the reporters in shorthand. In the judicial records of the Kings Courts, 'the reasons or causes of the judgments,' says Lord Coke, 'are not expressed, for wise and learned men do, before they judge, labor to reach to the depth of all the reasons of the case in question, but in their judgments express not any; and, in truth, if judges should set down the reasons and causes of their judgment within every record, that immense labor should withdraw them from the necessary services of the commonwealth and their records should grow to be like *elephantini libri*, of infinite length, and, in mine opinion lose somewhat of their present authority and reverence, and this is also worthy for learned and grave men to imitate. (Coke's Rep., part 3, Pref. 5.) The opinions of the judges setting forth their reasons for their judgments, are of great importance in the information they impart as to the principles of law which govern the court, and should guide litigants and right-minded judges in important cases—and where the pressure of other business will permit, such opinions should be given. It is not every case, however, which will justify the expenditure of time necessary to write an opinion. Many cases involve no new principles, and are appealed only for delay. It can serve no purpose of public good to repeat elementary principles of law which have never been questioned for centuries." Nothing in the experience of courts since these words were written furnishes any answer to the views thus set forth by Judge Field, with his characteristic clearness and force.

Besides the great and important changes thus made in the Supreme Court, a sweeping revolution followed as to the remainder of the judiciary. All the old courts of original jurisdiction except those of Justices of the Peace were swept away, and in their place, a Superior Court for nearly every county in the State was organized. To this court all cases then pending in the District Courts, County Courts, Probate Courts, and all other inferior courts, except justices of the peace, were transferred, and all cases in which those courts had exercised jurisdiction were thenceforth to be brought, heard, and deter-

mined in the new Superior Court. To the same judge are confided the powers exercised in other communities by separate tribunals. He is to perform all the duties of the judge in cases at common law, both civil and criminal; he is, as chancellor, to apply all the rules and remedies of equity jurisprudence; he is to perform the functions of the spiritual courts, as to wills, and estates of decedents, and matrimonial cases, besides determining all special proceedings, and, in the absence of federal legislation, dealing with cases of insolvency. Considering the learning and labor necessarily involved in the performance of these multifarious duties, it must be conceded that the administration of justice in our courts is far better than could reasonably have been expected.

Among the new things contained in the constitution of 1879, are the provisions making the judges of Superior Courts ineligible to any other office or employment than a judicial office or employment during the term for which they shall have been elected, and making their salaries payable, one-half by the county and one-half by the State. One of the most important provisions, however, is that which authorizes the legislature to remove justices of the Supreme Court and judges of the Superior Court. This can be done by a concurrent resolution of both houses of the legislature, adopted by a two-thirds vote of each house. A copy of the complaint must be served on the party complained of, and an opportunity given him to be heard. An attempt was made by a disappointed litigant to secure the removal of two of the justices of the Supreme Court, under this provision, but the attempt ignominiously failed. There may be occasions when the exercise of this summary method of getting rid of an objectionable judge would be justifiable, but it is a very dangerous expedient, and more likely to be used to remove from office a judge who is unpopular rather than one who is ignorant or unjust. That the judiciary should as far as possible be independent of both the other departments of the government—executive and legislative—is shown by the history of every government in which judicial tribunals have existed. The duties of judges and the reasons why they should not be controlled by any fear of legislative action which might result from any unpopular decision, have never been stated more convincingly than by Daniel Webster, in the Massachusetts Constitutional Convention, in words that should never be forgotten. After some reference to English judicial history, he said:

> "It cannot be denied that one great object of written constitutions is to keep the departments of government as distinct as possible, and for this purpose to impose restraints designed to have that effect. And it is equally true, that there is no department in which it is more necessary to impose restraints than the legislature. The tendency of things is almost always to augment the power of that department, in its relation to the judiciary. The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men. They are not, or never should be, political men. They have often unpleasant duties to perform, and their conduct is often liable to be canvassed and censured, where their reasons for it are not known, or cannot be understood. . . . . It is the theory and plan of the constitution to restrain the legislature as well as other departments, and to subject their acts to judicial decision, whenever it appears that such acts infringe constitutional limits. Without this check, no certain limitations could exist on the exercise of legislative power. . . . The Judge is bound by his oath to decide

according to law. The constitution is the supreme law. Any act of the legislature, therefore, inconsistent with that supreme law, must yield to it; and any Judge, seeing this inconsistency, and yet giving effect to the law, would violate both his duty and his oath. But it is evident that this power, to be useful, must be lodged in independent hands. . . . If the legislature should unhappily be in a temper to do a violent thing, it would probably take care to see that the bench of justice was so constituted as to agree with it in opinion. There is nothing, after all, so important to individuals as the upright administration of justice. This comes home to every man; life, liberty, reputation, property—all depend on this. No government does its duty to the people which does not make ample and stable provision for the exercise of this part of its powers. Nor is it enough that there are courts which will deal justly with mere private questions. We look to the judicial tribunal for protection against illegal or unconstitutional acts, from whatever quarter they may proceed. The courts of law, independent Judges, and enlightened juries, are citadels of popular liberty, as well as temples of private justice.

"The most essential rights connected with political liberty are there canvassed, discussed and maintained; and if it should at any time so happen that these rights should be invaded, there is no remedy but a reliance on the courts to protect and vindicate them. There is danger, also, that legislative bodies will sometimes pass laws interfering with other private rights than those connected with political liberty. Individuals are too apt to apply to the legislative power to interfere with private cases or private property; and such applications sometimes meet with favor and support. There would be no security, if these interferences were not subject to some subsequent constitutional revision, where all parties could be heard, and justice be administered according to the standing laws."

That these dangers to the independence of the judiciary were not imaginary, was shown in the subsequent history of the old Bay State, when a judge was deprived of his office because he executed a law of the United States which was disliked by the Massachusetts legislature at that time.

The constitution of 1879, with many undeniable merits and some demerits, as the people have already perceived, and have endeavored to remedy in some respects, was duly ratified and went into operation in the following year. The results, as might have been expected, have not been such as were predicted by either friends or enemies of the new organic law; the millennium has not dawned upon us, neither has "chaos come again." A people with the traditions and experiences of self-government may be interfered with by bad or imperfect laws, but will in practice so administer their affairs that substantial justice will in most instances be attained. This truth has been illustrated by the people of California for the past fifty years, and, I have no doubt, will continue to be so in the future.

The justices of the Supreme Court chosen at the first election were Robert F. Morrison, chief justice, and E. W. McKinstry, Samuel B. McKee, James D. Thornton, John R. Sharpstein, M. H. Myrick and Erskine M. Ross, associate justices. The Chief Justice and Justices McKinstry, McKee, Thornton and Sharpstein, had been judges of District Courts, and Justice Myrick had been Probate Judge in San Francisco for many years. Justice Ross alone had held no judicial office; but after distinguished and honorable service as Justice of our Supreme Court he was appointed, first, District and then Circuit Judge of the United States, in both of which positions he has won additional laurels by the learned, able and faithful performance of the duties of his exalted station, both as trial judge and in the United States Circuit Court of Appeals. Chief Justice Morrison and Justices McKee and Sharpstein have passed to a still higher tribunal, but McKinstry, Thornton and Myrick still remain with

us. Recent public addresses and arguments by Judge McKinstry before the court of which he was formerly a very important part, show no failure of intellectual strength and brilliancy.

This sketch has already exceeded its proper limits, and therefore even a brief statement and consideration of the jurisprudence of the State, made up of the legislative enactments and judicial decisions of a half century, cannot be given here. It deserves and will repay all the attention that the juridical student may bestow upon it. This composite structure is formed of materials drawn from the history and experience of the ages, of governments ancient and modern, in the old world and the new. Notwithstanding the somewhat flamboyant rhetoric employed in the report of the judiciary committee of the first legislature in exalting the Common Law of England above the Civil Law, our law-makers have not failed to make use of the rules and maxims of the Civil Law, so far as they have commended themselves to good sense and good morals and have met the exigencies of the common weal. In framing our law as to crimes and criminal procedure, humanity and wisdom were their guides. The legislature and the courts united in the endeavor to perfect a system by which the community would be protected, and the individual, when charged with crime, be heard before being condemned; and they avoided the infliction of punishments so severe as to beget sympathy for the accused rather than for the accuser. Thus California has no share in the reproach of the ferocious system of the English Criminal Law—a system which fully deserved the denunciation of that great jurist, Edward Livingston, styled by Sir Henry Maine, "the first legal genius of modern times." After enumerating some of the shocking instances of the savagery of the English law, he says: "The statute gave the text, and the tribunals wrote the commentary in letters of blood, and extended its penalties by the creation of constructive offenses. The vague and sometimes unintelligible language, employed in the penal statutes, and the discordant opinions of elementary writers, gave a color of necessity to this assumption of power; and the English people have submitted to the legislation of the courts, and seen their fellow subjects hanged for constructive felonies, quartered for constructive treason, and roasted alive for constructive heresies, with a patience which would be astonishing, even if their written laws had sanctioned the butchery."

The concluding words of this passage point to the wisdom of a code which enumerates and defines all criminal offenses, and leaves no shoreless sea of so-called "common law crimes," in which to submerge the citizen, by the exercise of judicial discretion—or indiscretion. In codification of the laws, as well as in other respects, the people of California may claim enrollment with the pioneers.

Those in our state who have labored in this field of human endeavor for the betterment of our law and its administration, though they may not rank in fame with such law reformers as Bentham, Austin, Romilly, Bethel, and Field, deserve well of their fellow-men.

——*HENRY H. REID.*

San Francisco, Cal.

A REVIEW OF MILITARY-CIVIL GOVERNMENT

1846-50

L. M. Holloway

REVIEW of MILITARY-CIVIL GOVERNMENT—1846-50

The frame and working machinery of a modern civilized state, compose a complex and subtle institution, evincing the highest social invention; and it is also the most important institution, for it involves the safety, happiness and elevation of mankind.

This is especially so with a republican state, as it is devised and constructed by its framers, for the intended use and benefit of themselves and their children and successors forever.

In considering the subject indicated in the title of the present paper, that is, the civil government of California from 1846 to 1850, carried on by the people, under such laws as there were at the time, and yet within the control of the chief military head of the land forces here, it seems proper preliminarily, to show the condition of the country and people, that we may better understand the situation to which such authority applied—a period beginning with July 7th, 1846, and ending with the year 1849. The main facts and causes will be noticed, which preceded and tended to shape the government of California from July, 1846, to 1850, with references to some of the actors in the scene. The acquisition of California finally came by formal cession in our treaty with Mexico, concluded in May, 1848; but it was the result of the war with that nation, which was brought on by various causes, motives and pretexts.

California stands unique in the history of political government, as an instance where the whole people, not entirely homogeneous, of an unorganized territory, of their own free will, by the light of their own wisdom, organized and put into successful and permanent operation, in a peaceful and orderly manner, at the close of the year 1849, a great and prosperous State, embracing seven hundred miles of frontage on the Pacific ocean, with a sparse population, variously estimated at from 175,000 to 200,000, chiefly of the Anglo-Saxon type, but including representatives from almost every part of the globe.

It was a time of profound peace, and most of the people had arrived since the discovery of the marvelously rich gold mines shortly before, which had electrified the commerce of the world. The great majority had no settled

intention of making this their permanent place of residence; this region had lately passed from the domain of Mexico to that of the United States.

The wonderful productiveness of the soil, in greatest variety, of the most valued fruits of the earth, for the comfort and support of mankind, seemed until some time after the year 1849, to have been almost unnoticed. Those substantial things, of which the State at present is so proud, attracted little attention until after the gold excitement began to decline.

Prior to 1846, the Mexican government of Upper California, consisted of the departmental assembly, with the Governor as chief executive of the department. Its sessions were held at Monterey, the capital. The various other officers were mainly Judges of the Court of First Instance, the prefects, subprefects, alcaldes and justices of the peace.

The simple habits of the thinly scattered population required very little legislation; the acts of all officers were generally subject to the revisory power of the Governor and assembly, whose proceedings were in many respects subject to the approval of the Mexican congress; all this was at once suspended when our forces took possession of the country. There remained no settled or well-defined form of government or system of legislation, or laws, or courts or magistrates.

The revenue laws and the postoffice laws were tardily extended by Act of Congress to California, in 1849, and the corresponding officers were appointed to and took their respective places in the autumn of 1849, in several of the large towns; prior to which time the import duties had been collected by officers appointed by, and under direction of, our military Governors. Of the officers of the regular army present, as a rule, the senior in rank was the acting Governor in civil affairs; and he was the ultimate authority in all local disputes, though his action was seldom invoked or exercised; all questions referred to him from alcaldes or municipalities were promptly disposed of, with reasons briefly stated, indicating a clear understanding and regard for justice and good order. In other cases the judgments in the Alcaldes' Courts were reversed; with a reservation, in cases involving real property, that the decision was without prejudice to review when the courts should be finally established.

Some of the decisions of the Governors sent down to the alcalde, contain the suggestion that the judgment would be duly enforced, if necessary. That was final; no time or money was wasted in further contention.

Several of our warships lingered about the coast, with little to do, and their presence was almost unfelt. Not the slightest apprehension or inconvenience was suffered from the military or naval officers or men, but on the contrary, where their presence was felt at all, it was in the way of the agreeable society of those officers and the pleasant sense of their protection, should that become necessary.

In the meantime, after 1848, the three thousand miles of unbroken wilder-

ness between the "States" on the East, and California on the West, was marked by almost continuous caravans of immigration into the gold fields; and by sea, "around the Horn," and from every inhabited quarter of the globe; by steam and sail and land, the Argonauts were eagerly hastening to this Colchis of their hopes. Merchantmen, from our Atlantic ports, from Europe, from all the islands of the Pacific, and from China, came laden with passengers and goods, including miners' supplies, things of utility, and also with articles the most costly and superb, to please the fancy and satisfy the appetite; and especially came by clipper-ships from China, cargoes of silks and novelties, which latter, for a time, were in great demand as "presents to send home"; for the word had gone abroad, that gold was in plenty and that things brought fabulous prices. Many articles were new to us—toys as it were, with which we were not familiar—from regions of the globe, with the geography of which we knew but little—of whose people and their domestic habits, and products, we knew less; besides all this, the extreme scarcity of money, that for years had preceded the times of which we are now speaking, having suddenly changed to affluence, it gave the new settlers the pleasurable opportunity of accompanying their "letter home" with something beautiful, costly, new—to family, sweetheart or friend. It was at first considered quite venturesome and even heroic, for strong young men to start for this strange and unexplored region; and as for women to come, that was generally out of the question; so that in 1848 and 1849, a woman among miners was a very rare and delightful object of attention.

MORAL EFFECTS OF IMMIGRATION.

The trials, dangers and sufferings by sea and by land, bravely sustained and patiently endured by the early immigrants; the sympathy, kindness, assistance and generosity, lent by the stronger to the weaker, ever gratefully received, were not without their ennobling effect in developing the better nature of them all. Such a schooling, such a chastening of the minds and hearts of that great concourse on their long, toilsome and perilous journey to this promised land, have not been lost; but have given a quickening and lasting impulse to the evolution of the race. Was there not visible, some of its first fruits in the manhood and generosity of these people here, whether in mart or mine, in the golden years of the fifties?

SUTTER, VALLEJO, COOPER AND LARKIN.

Amongst the elements that tended to create and foster the friendly disposition of the Mexican inhabitants of California towards the United States, in preference to other nations, there are several men whose character, conduct and influence, seem worthy of special mention.

Captain John A. Sutter, a German-Swiss, of culture and military education, was a local magnate in his fort on the American river, near the site of the

present Sacramento city. Having a grant from the Mexican government of eleven leagues of land, with the labor of Indians whom he taught to work for a better subsistence than their native habits could supply, and with the help of superior employes, all well armed, Sutter kept up a sort of military establishment at "the Fort"; he had herds of horses and cattle, with the freedom of unlimited pasture, and he raised large quantities of wheat and "threshed it easily by turning into a spacious corral an hundred or so of horses upon the wheat in the straw already piled as high as the horses' backs," (as General Bidwell described it). The horses were driven around violently, the grain quickly threshed out from the straw, but the much greater difficulty remained, to slowly winnow out the chaff, in those calm, sultry days, without our modern fanning mills.

With his wheat and cattle and horses galore, Captain Sutter was ever most hospitable and generous to all who came; and they were not a few. History and tradition tell of his benevolence to the exhausted immigrants arriving; and of his sending supplies and succor to meet others on the way, too much reduced in strength and food to complete their journey.

Captain John Baptist Roger Cooper is another who should be gratefully remembered in this relation. He was a native of Alderney Island, England, whence as a boy, he came with his widowed mother to Boston, where he grew up and became a shipmaster, and as such he brought his vessel, the Rover, from Boston to Monterey in 1823, with a cargo of merchandise.

He sold his ship to Luis Arguello, the Governor of California, in whose service he commanded the Rover three years, on voyages to the ports of the South American coast, to the Islands, and to China, from his home port, Monterey; and finally he settled and became an extensive land-owner about Monterey and elsewhere in the State.

On August 24, 1827, in the chapel of the Presidio of Monterey, as the record reads, Captain Cooper married Encarnacion Vallejo, sister of the late General Marino G. Vallejo, then a young military officer of much local influence. Vallejo's name, as that of one who rendered distinguished services in early times to his own people, and later to ours, is recorded in letters of bronze on monumental granite in the City Hall Place, San Francisco.

The writer, now, by way of episode, may be permitted to record the fact that he has the honor of a personal acquaintance with Mrs. Cooper, the lady above named, his near neighbor. She still retains all her faculties, now above the age of four score and ten, and in the daily enjoyment of the converse and reverence of a large circle of her children and friends.

Thomas O. Larkin, whose name stands conspicuous in history as having rendered eminent services to the United States in the acquisition of California, was a half-brother of Captain Cooper above mentioned. They were sons of the same mother, who came to Boston a widow, bringing her young son, John, as before related. By a second marriage, she became the mother of Thomas O. Larkin in Massachusetts. When a young man, Mr. Larkin came from Boston

to California, in 1832, and joined his prosperous older brother at Monterey. In 1844, Thomas became United States consul, accredited to that then Mexican port, where he so continued, down to the change of flags.

Cooper and Larkin were ever in favor with the Californians; and being also allied to the influential family of the Vallejos and others of their class, we can easily understand how it helped to create a friendly feeling, with some of the people at least, in favor of the Americans. We may well suppose that the spirit of freedom imbibed by those brothers, under the Stars and Stripes, while boys in Boston, was later felt for good in their adopted home in California.

THE FIRST CONSTITUTION AND ITS FRAMERS.

Prior to the sudden influx of people, on hearing of the gold discovery of January 24th, 1848, (which was shortly before the treaty of peace, and while our army was holding the City of Mexico under the armistice), the meager population of this region was in a few small towns and at the missions, and on the cattle ranches at remote distances from each other. It was in the autumn of 1849 that the constitution was adopted by a vote of the people, including the latest comers, with but little, if any, restriction on the franchise. The framing and adoption of that instrument came of the people's own motion —of their own free will, without the slightest dictation from Federal power, as to what it should contain. The idea of State organization, direct, instead of the usual territorial probation, certainly had the tacit consent and encouragement of the executive of two administrations, viz., President Polk and President Taylor successively. This idea most naturally was imparted by the executive to immediate subordinates, though no sign of dictation to that end is visible of record.

The substantial features of that constitution, remain to this day, though it has been renewed and changed in some particulars. Under it the people have continued in peace, prosperity and happiness. That work was mainly the product of the American mind. Its chief promoters were lately from "the States"—there were also a number of the leading native Californians in the convention, as also in the legislatures following. The members of that constitutional convention were imbued with a love of country and liberty; with an ardent devotion to the spirit of the Declaration of Independence, and of the Federal Constitution. California, although newly acquired territory, was confessedly as much a part of American soil as any of the original states that first struck for liberty; and there was no doubt in the minds of the framers of that instrument, but that the State was directly to become a member of the Union. Those men were eminently select and representative, including miners, lawyers and physicians, with a variety of other callings, some of whom already had experience in politics and affairs of State. The constitution they framed manifests their clear understanding of the dignity of the work committed to their hands.

The native Californians in the convention, naturally were anxious lest the new-comers might by invidious legislation in the matter of taxation, discriminate to the disadvantage or ruin of the native land-holders, as, for instance, so as to make their large unproductive ranches pay most of the taxes. To allay their fears in this, besides all other provisions for the equal protection of persons and property, it was especially provided in the constitution, that *all* property should be taxed—only excepting State property—according to value. That its value should be ascertained by assessors, elected by the voters of the district wherein the property is situated; thus securing equality and fairness in taxation, in so far as by legislation it was possible. This gave satisfaction and a sense of security and contentment to the native Californians especially, thus eliciting their co-operation and friendship in the affairs of state.

A full and fair proportion of the native Californians, consisting of their most trusted and experienced men, were elected members of the first and next succeeding legislatures, all of whom were the most loyal and cheerful supporters of the State government, and enjoyed a full share of its legislative, judicial, and executive offices and honors, in both State and county government.

The framers of our first constitution did not prepare simply a sketch or outline of the proposed State government, to send to Congress, to be neglected or carped at, as did New Mexico about the same time—while New Mexico to this day remains a territory merely; but they completely framed the fundamental law, providing for a fully equipped State, to go into immediate operation, to be admitted into the Union or not, as Congress might determine at leisure; but in the meantime they organized a State, and put it to work from its inception. It became such, and instantly upon the meeting of the Governor, senate and assembly, and being sworn into office, the military Governor, General Riley, in December, 1849, resigned all claims to civil authority. Since that event, California has exercised completely all the functions of a State, though it was not formally admitted into the Union by Act of Congress until September 9th, 1850.

FIRST COLLECTOR OF CUSTOMS AT SAN FRANCISCO.

Colonel James Collier arrived at San Francisco (via San Diego) on November 10, 1849, he having been appointed collector for this port, in April, 1849. Two days after taking possession of the office, he makes his first report of date November 13, 1849, to Mr. Meredith, Secretary of the Treasury, wherein he speaks of "having suffered much of hardship, of privation, and toil, and encountered no little peril," he adds: "We were compelled for several days in succession to fight our way through hostile bands of Indians, . . . with but one man wounded . . . both bones of his arm broken." In crossing the Colorado, four persons were drowned; one of the number was Captain Thorne, of New York, who was in command of the dragoons."

This report describes the frightful prices of labor, provisions and rents of tenements in San Francisco, saying "flour is this day selling for $40 per barrel and pork at $60, boarding $5 a day, without rooms or lodging; a small room, barely sufficient to contain a single bed, rents for $150 a month, and every article of food at a like rate. "I am perfectly astonished at the amount of business in this office. I took possession of it yesterday. The amount of tonnage on the 10th inst. (Nov. 10, '49), in port was 120,317 tons; of which 87,494 were American, and 32,823 were foreign."

These figures give a faint idea of the sudden growth of shipping caused by the gold discovery of January 24, 1848; they also indicate the presence in this port at that time, of tonnage equal to 120 ships of a thousand tons each. The country he traversed in coming seemed to him of little value; and especially he says: "The valley of the Gila is utterly worthless, I would not take a deed of the whole country tomorrow."

The rates of wages in San Francisco, which he specifies, would absorb a large share of the current revenue.

In this letter Colonel Collier says: "You are doubtless already advised that the people of California, in convention, have adopted a constitution of State government, and the election for governor and for other officers is this day being held."

Previous to the coming of Colonel Collier, the import duties had been collected by officers under appointment and direction of the military governors.

Of the local merchants, seventeen of the heaviest firms presented the new collector with a most cordial letter of congratulations upon his safe arrival at this port.

Prior to the time of the events we are now reviewing, some fifty-four years ago, there were no railroads, no telegraphs, no steamers, no roads or known ways across the continent; sailing vessels very seldom rounded the Horn, and most of such as there were, came as "hide droggers," gathering hides and tallow, hoofs and horns of cattle, paid for in goods, chiefly from our Atlantic cities; ships' voyages being very long, occupying one or two years. (See Dana's Two Years Before the Mast.)

It took the better part of a year to march an army across the plains; it was practically three thousand miles of wilderness, beset by hostile Indians, with great rivers to cross, no roads, no ferries, no boats, no bridges and no base of supplies.

Colonel Mason at Monterey, under date of September 18, 1847, writing to Adjutant General Jones, in Washington, says: "It must be remembered, that it requires now six months to send a letter to the United States, and as long to receive an answer; and again, under date of December 27th, 1848, Colonel Mason writes from California to the war department, saying, "The ship Huntress has just brought latest dates of April 18th"—eight months.

Colonel Fremont with a staff of officers and scientists and a few soldiers,

sent out by our government on his exploring expedition, as to the resources of this Western slope, was moving about with celerity, between Oregon and Monterey, with an eye to political conditions. This had excited the jealousy of the local Mexican authorities as to what was his business here. Some European powers were casting wishful eyes to the acquisition of California, then in the nominal but feeble possession of Mexico. Captain Sutter, while loyal to Mexico, saw the crisis approaching, and felt a strong preference in favor of the United States, above all others. Thomas O. Larkin, residing at Monterey, California, was United States consul for Monterey from 1844, and later became confidential agent and correspondent of our government. Meantime, Mr. Larkin, together with Cooper, Vallejo and others, was courting the respect and friendship of the most enlightened and influential residents of this department, to stand in with us in preference to all others, in the event of a change of rulers, which began to appear probable. The actual commencement of war with Mexico was not heard of here till long after it had actually begun.

Early in March, 1846, Colonel Fremont was ordered peremptorily by General Jose Castro to leave California immediately, before actual hostilities on the Atlantic side had commenced. Fremont at first disregarded the order to depart; but soon after, he started for Oregon; was overtaken somewhere about the Klamath Lakes by Major Gillispie, with orders from Washington to return to support Commodore Sloat and his navy in the capture and possession of Monterey. Fremont did so. He got back to Sacramento valley May 29, 1846. What those orders were has never particularly become public. They are to be understood only by succeeding events.

In the years 1846-7-8, occurred a number of momentous affairs, which largely affected the destiny of these westerly possessions of our nation. The chief of these were: The first battles of the war: those of Palo Alto, Monterey, Buena Vista, and others of lesser note, under General Taylor, and the capture of Vera Cruz, with its so-called impregnable fortress, San Juan de Ulloa; the march to the City of Mexico and its capture, after the fearful battles of Molino del Rey and Chapultepec; and the surrender of the city to General Scott in February, 1848. Thence the city was held in our quiet possession pending the armistice until the final exchange of the treaty of peace in May, 1848, when our army evacuated the city, while saluting the American and Mexican flags.

THE GOLD DISCOVERY.

Perhaps the most important local event which distinguished those years, was the discovery of gold in the mill race of Captain Sutter's sawmill, as it was about being finished, under the direction of his foreman, James W. Marshall, on the North Fork of the American river, at the present town of Coloma, El Dorado county, California. The date of that discovery is fixed as of Jan-

uary 24th, 1848, our army still being in possession of the City of Mexico. That discovery was immediately followed by the spread of placer and river-bar mining, far and wide throughout the mineral region, with almost electrical rapidity. The towns and settlements of California were nearly depopulated of their male inhabitants; the sailors deserted the ships, and soldiers their ranks, all flocking to the mines, and prices of labor, and of all supplies rose to incredible figures,—all these are matters of popular history, merely adverted to here as features of the picture.

James K. Polk was President of the United States from March 4th, 1845, till March 4th, 1849; and of his cabinet James Buchanan was Secretary of State, William L. Marcy was Secretary of War, and Geo. Bancroft Secretary of the Navy.

The great mass of correspondence in the conduct of the Mexican War, relating especially to California, was under signature of that very masterly statesman, Mr. Marcy, as Secretary of War. To his wisdom is largely due the policy which guided that important state affair, from its beginning till the final treaty of peace. This seems manifest from the public documents, from first to last, of that war, called out by the *resolution* of the House of Representatives, passed December 31st, 1849. This resulted in developing in much detail, documents embracing all the correspondence, orders, etc., emanating from the heads of departments, which are appended to the answer of the President to that resolution, so far as California is concerned; covering the years 1846 to 1850 inclusive.

RESOLUTION OF DECEMBER 31, 1849.

President Polk and his cabinet had passed out of office at the date of that resolution. The inquiry was addressed to the then President of the United States, General Zachary Taylor. Its scope was so extensive that the answer necessarily embraced many documents, making nearly one thousand pages. The answer was under date of January 21st, 1850. The questions were of great significance, when we consider them in the light of the fierce political strife of the times, and the matters of national history which that resolution caused to be disclosed—direct from the executive archives—and it was "ordered that 10,000 copies extra be printed."

The resolution of the House of Representatives of the above date, and just alluded to, is of great significance, in view of the current events of those days, touching the most exciting question of the times, pending between propagandists of slavery on the one hand and opponents thereof on the other, which gave rise to acrimonious debates and corresponding jealousies of the respective sides towards their adversaries. The three successive Presidents, Tyler, Polk and Taylor having been elected from the slave states, were naturally supposed by the free states, to be in sympathy with the propagandists. Having this con-

dition of public sentiment in view, we can better understand the spirit and full inside meaning of the resolution of inquiry—requesting the President of the United States to communicate to the House of Representatives as early as he conveniently could, as follows: "Whether since the last session of Congress, any person has been by him appointed either a civil or military Governor of California and New Mexico; if any military or civil Governor has been appointed there, and their compensation; if a military and civil Governor has been united in one person, whether any additional compensation has been given for said duties and the amount of the same. Also that he be requested to communicate to this House whether any agent or agents, or other persons, have been appointed by the President or any of the departments of this government, and sent to California or New Mexico, or recognized in said territories by this government, authorized to organize the people of California or New Mexico into a government, or to aid or advise them in such organization; or whether such agent, civil or military Governor, was instructed or directed to aid, preside over, or be present at the assembly of a body of persons called a convention, in California, to control, aid, advise, direct, or participate in any manner in the deliberations of that body of persons; if any, the names of such agent or agents and their compensation. Also, that the President be requested to inform the House whether any advices had been given the people of California or New Mexico, as to the formation of a government for themselves, and if so, what agents were sent, and their compensation, and to communicate to the House all the instructions to such Governor, civil or military, or to any officers of the army, or to any other persons who may have been sent, and all the correspondence, proclamations, or appointment of elections, and as to the formation of a government for said territories by the inhabitants, etc. "Also, all similar instructions that were given to similar officers or agents by the late executive," (meaning President Polk).

The resolution became significant also, in that it brought forth into open public recorded history, all the documents, orders and correspondence called for; they are annexed to the President's answer, forming a fund of accurate and authentic history of the founding of a new State out of territory lately acquired from a people of other type, laws and language than our own—a history of unquestionable authority.

One cannot resist an expression of commendation of the entire propriety and wisdom of conduct which distinguish the three successive Presidents, Tyler, Polk and Taylor, and their cabinets, during the period which changed this blessed land from the fading power of Mexico, into the more prosperous and enlightened State of California under our Nation's banner.

President Taylor's reply to the resolution of inquiry is clear, candid, and fully responsive; frank, and characteristic of the man withal. It is in full as follows:

PRESIDENT ZACHARY TAYLOR'S RESPONSE TO THE INQUIRIES OF THE HOUSE OF REPRESENTATIVES.

To the House of Representatives of the United States:

I transmit to the House of Representatives, in answer to a resolution of that body passed on the 31st of December last, the accompanying reports of heads of departments, which contain all the official information in the possession of the Executive asked for by the resolution.

On coming into office, I found the military commandant of the Department of California exercising the functions of civil governor in that territory; and left, as I was, to act under the treaty of Guadalupe Hidalgo, without the aid of any legislative provision establishing a government in that Territory, I thought it best not to disturb that arrangement, made under my predecessor, until congress should take some action on that subject. I therefore did not interfere with the powers of the military commandant, who continued to exercise the functions of civil governor as before; but I made no such appointment, conferred no such authority, and have allowed no increased compensation to the commandant for his services.

With a view to the faithful execution of the treaty, so far as lay in the power of the Executive, and to enable congress to act, at the present session, with full knowledge and as little difficulty as possible, on all matters of interest in these territories, I sent the Honorable Thomas Butler King as bearer of dispatches to California, and certain officers to California and New Mexico, whose duties are particularly defined in the accompanying letters of instruction addressed to them severally by the proper departments.

I did not hesitate to express to the people of those territories my desire that each territory should, if prepared to comply with the requisitions of the constitution of the United States, form a plan of state constitution and submit the same to congress, with a prayer for admission into the Union as a state; but I did not anticipate, suggest or authorize the establisment of any such government without the assent of congress; nor did I authorize any government agent or officer to interfere with or exercise any influence or control over the election of delegates, or over any convention, in making or modifying their domestic institutions or any of the provisions of their proposed constituton. On the contrary, the instructions given by my orders were, that all measures of domestic policy adopted by the people of California must originate solely with themselves; that while the Executive of the United States was desirous to protect them in the formation of any government republican in its character, to be, at the proper time, submitted to congress, yet it was to be distinctly understood that the plan of such a government must, at the same time, be the result of their own deliberate choice, and originate with themselves, without the interference of the Executive.

I am unable to give any information as to laws passed by any supposed government of California, or of any census taken in either of the territories mentioned in the resolution, as I have no information on those subjects.

As already stated, I have not disturbed the arrangements which I found had existed under my predecessor.

In advising an early application by the people of these territories for admission as states, I was actuated principally by an earnest desire to afford to the wisdom and patriotism of congress the opportunity of avoiding occasions of bitter and angry dissentions among the people of the United States.

Under the constitution, every state has the right of establishing, and, from time to time, altering its municipal laws and domestic institutions, independently of every other state and of the general government; subject only to the prohibitions and guaranties expressly set forth in the constitution of the United States. The subjects thus left exclusively to the respective states were not designated or expected to become topics of national agitation. Still, under the constitution, congress has power to make all needful rules and regulations respecting the territories of the United States, every

new acquisition of territory has led to discussions on the question whether the system of involuntary servitude which prevails in many of the states should not be prohibited in that territory.

The periods of excitement from this cause which have heretofore occurred have been safely passed; but during the interval, of whatever length, which may elapse before the admission of the territories ceded by Mexico as states, it appears probable that similar excitement will prevail to an undue extent.

Under these circumstances, I thought, and still think, that it was my duty to endeavor to put it in the power of congress, by the admission of California and New Mexico as states, to remove all occasion for the unecessary agitation of the public mind.

It is understood that the people of the western part of California have formed a plan of a state constitution, and will soon submit the same to the judgment of congress, and apply for admission as a State. This course on their part, though in accordance with, was not adopted exclusively in consequence of any expression of my wishes, inasmuch as measures tending to this end had been promoted by the officers sent there by my predecessor, and were already in active progress of execution before any communication from me reached California. If the proposed constitution shall, when submitted to congress, be found to be in compliance wth the requirements of the constitution of the United States, I earnestly recommend that it may receive the sanction of congress.

The part of California not included in the proposed State of that name is believed to be uninhabited, except in a settlement of our countrymen in the vicinity of Salt Lake.

A claim has been advanced by the State of Texas to a very large portion of the most populous district of the territory commonly designated by the name of New Mexico. If the people of New Mexico had formed a plan of state government for that territory as ceded by the treaty of Guadalupe Hidalgo, and had been admitted by congress as a state, our constitution would have afforded the means of obtaining an adjustment of the question of boundary with Texas by a judicial decision. At present, however, no judicial tribunal has the power of deciding that question, and it remains for congress to devise some mode for its adjustment. Meanwhile, I submit to congress the question whether it would be expedient, before such adjustment, to establish a territorial government, which, by including the district so claimed, would practically decide the question adversely to the State of Texas, or, by excluding it, would decide it in her favor. In my opinion, such a course would not be expedient, especially as the people of this territory still enjoy the benefit and protection of their municipal laws, originally derived from Mexico, and have a military force stationed there to protect them against the Indians. It is undoubtedly true that the property, lives, liberties, and religion of the people of New Mexico are better protected than they ever were before the treaty of cession.

Should congress, when California shall present herself for incorporation into the Union, annex a condition to her admission as a State affecting her domestic institutions, contrary to the wishes of her people, and even compel her, temporarily, to comply with it, yet the State could change her constitution at any time after admission, when to her it should seem expedient. Any attempt to deny the people of the State the right of self-government, in a matter which peculiarly affects themselves, will infallibly be regarded by them as an invasion of their rights; and, upon the principles laid down in our own Declaration of Independence, they will certainly be sustained by the great mass of the American people. To assert that they are a conquered people, and must, as a State, submit to the will of their conquerors in this regard, will meet with no cordial response among American freemen. Great numbers of them are native citizens of the United States, not inferior to the rest of our countrymen in intelligence and patriotism; and no language of menace, to restrain them in the exercise of an undoubted right, guaranteed to them by the treaty of cession itself, shall ever be uttered by me, or encouraged and sustained by persons acting under my au-

thority. It is to be expected that, in the residue of the territory ceded to us by Mexico, the people residing there will, at the time of their incorporation into the Union as a State, settle all questions of domestic policy to suit themselves. No material inconvenience will result from the want, for a short period, of a government established by congress over that part of the territory which lies eastward of the new State of California; and the reasons for my opinion that New Mexico will, at no very distant period, ask for admission into the Union, are founded on unofficial information, which I suppose, is common to all who have cared to make inquiries on that subject.

Seeing, then, that the question which now excites such painful sensations in the country will, in the end, certainly be settled by the silent effect of causes independent of the action of congress, I again submit to your wisdom the policy recommended in my annual message, of awaiting the salutary operation of these causes, believing that we shall thus avoid the creation of geographical parties, and secure the harmony of feeling so necessary to the beneficial action of our political system. Connected as the Union is with the remembrance of past happiness, the sense of present blessings, and the hope of future peace and prosperity, every dictate of wisdom, every feeling of duty, and every emotion of patriotism, tend to inspire fidelity and devotion to it, and admonish us cautiously to avoid any unnecessary controversy which can either endanger it or impair its strength, the chief element of which is to be found in the regard and affection of the people for each other.

Z. TAYLOR.

Washington City, D. C., January 21, 1850.

Annexed to the foregoing letter or reply of the President, were the official reports from several cabinet officers, including those from the Department of State, of January 7, 1850, John M. Clayton, Secretary; from the Treasury Department of January 21, 1850, W. M. Meredith, Secretary; from the War Department, of January 18, 1850, Geo. W. Crawford, Secretary; reporting documents dated May 14, 1846, by W. L. Marcy, then Secretary, including copies of instructions to "Colonel S. W. Kearny, First Regiment of Dragoons, or officer commanding Fort Leavenworth," and other papers.

Those are peculiarly interesting and instructive documents, as they disclose the whole plan, from the beginning of preparation for the invasion of New Mexico and California by the land forces, to meet and support the naval squadron on their arrival at Monterey; and Colonel S. W. Kearny was the confidential, trusted agent, selected by the government to carry out that difficult undertaking.

The plan embraced the task of increasing the strength of the army then under command of Kearny at Fort Leavenworth; of marching it across some three thousand miles of wild and almost uninhabited country to the Pacific Coast; crossing mountains, rivers and deserts; of subduing and holding en route, the sparsely settled province of New Mexico, and garrisoning its capital, Santa Fe. It is refreshing to observe the implicit confidence imposed by Secretary Marcy in Colonel Kearny; and it is admirable to behold how perfectly the latter executed in letter and spirit the orders of the former; not only to take and hold the territory, but to protect the inhabitants in their persons, property and religion.

They were also assured of the early opportunity of electing their own State or territorial officers, the same as in the other territories of the United States.

It required the time of several weeks to communicate between the War Department at Washington, and Colonel Kearny, who was supposed to be at Fort Leavenworth, on the Missouri River, May 14, 1846, at the opening of the correspondence on the subject of the contemplated expedition.

The foregoing resolution of the House of Representatives, and the President's answer thereto, with documents annexed, were accordingly printed. All these were products of the great slavery agitation; the questions were, whether slavery should be propagated or extinguished; and whether it should be confined within its then existing limits, or extended into new states and territories, under all the legal and constitutional protection of the National government, as sacredly and efficiently as any property or personal rights of citizens are protected; and were the judicial magistrates and ministerial officers in the free states legally bound to lend their services in the arrest and restitution of fugitive slaves to their masters, under all the pains and penalties of the Fugitive Slave Law, however much their own private opinion or conscience might revolt at such, to them, humiliating service; and should no state be admitted as a free state, or unless at least coupled with a slave state, to keep up the "balance of power" in the Senate, which was then equally divided on the slavery question—and several other questions of a kindred nature—constituting "the question which now excites such painful sensations in our country," as President Taylor just above expresses it.

The free states had opposed the annexation of Texas, while it was an independent sovereign republic, because it was already a slave state, and as such while it would widen our national domain and power, and in that respect was desirable, yet on the other hand, it would essentially enlarge slave territory, and strengthen the power of that institution in the national legislature and polity. Texas was admitted, as we have stated, by Act of Congress of March 1st, 1845, approved by President John Tyler, and that act of admission was ratified by vote of the Texan people, February 19th, 1846. Texas contained a territory about seven times as large as Pennsylvania; the Act of Admission provided that it might be divided into five states, thus placing ten Senators more in Congress.

The question was still undecided whether the Rio Grande del Norte or the Nueces river should be the boundary between the United States and Mexico. The question alone might have been settled by peaceful negotiations; but in its relation to other interests it was an element of constant irritation; and yet its importance was magnified by the desire of statesmen of the time, to extend our domain from the northern borders of Mexico and Texas, to Oregon and to the Pacific Coast.

Where there is a will there is a way, as between a stronger nation and a weaker one; as it is in most other affairs. Such extension was in a large sense very desirable on our part, especially as viewed in the light of later events. That expansion, besides enlarging our borders, would open a new field for

the possible extension of the "peculiar institution." This hope may have been a further inducement to the acquisition of the new territory of California, or the reverse would result, should the new state decide, as they did later, in favor of free soil.

Some cruelties and wrongs had been perpetrated on our people by Mexico; but whether with or without justification, it is not the present purpose to discuss or determine. It is sufficient to say, that in such condition of public sentiment, the Mexican War began, with the battle of Palo Alto, May 8th, 1846, and ended with the treaty of peace concluded February 2nd, 1848; ratification being exchanged at Queretaro, May 30, 1848. This gave us clear and quiet title and possession of this vast territory, against all the world.

LEADING EVENTS PRECEDING STATE ORGANIZATION.

Great events were crowded into the very few years preceding the organization of California. Unlike the states of Europe, of different languages and ancient nationalities and laws, with their monotonous quarrels and ceaseless wars about church creeds and royal succession, the great stretch of territory of California and New Mexico, newly acquired, was free from all such embarrassments. It was mostly inhabited by merciless Indians, savage beasts, herds of buffalo and wild horses; and it came to pass, as the result of that acquisition that new states arose, ruled by free men, self-governed under a system of written constitutions and laws of their own choice and construction, designed to secure equal rights to one and all. The church was made subordinate to the State. In the class of modern states last mentioned, California stands as the first-born of the family.

The state-builders of our lately acquired insular possessions of Cuba, Porto Rico, Hawaii, and the Philippines, may yet find some useful hints in studying the history of California, to aid them in their new field, for the exercise of statesmanship; in adapting the principles of republican government, under written constitutions and laws, to foreign territory, peopled by those whose customs, laws, religion, habits, education, or the want of education, are so different from one another, and all of them so very different from those who from first to last, framed our earlier American constitutions.

If our dominion over those insular possessions had been acquired under the consolidating pressure of foreign enemies, as was the case with our patriotic ancestors of '76, and with less of the spirit of conquest, trade and commercial profit, and less of political and military ambition, would not our success in gaining the confidence and respect and aid of the heterogeneous mass of humanity, so suddenly brought under our banner, have been much greater, more rapid, at less cost of blood and treasure, and more to the safety and credit or our nation? Who shall be our judge? One thing is certain, *i. e.*, that the events of the last three years of the nineteenth century seem fraught with the destiny of our country and of mankind.

Unlike the early history of ancient nations, we have not to depend on myths or traditions for the origin of the State of California; nor for a clear account of the valor and wisdom of most of its early founders; nor yet is there any uncertainty as to circumstances which gave birth to the military-civil government of the first four years succeeding our first possession; for, happily, the fierce sectional contention prevailing in Congress, arising from the slavery question, caused to be introduced into the House of Representatives, and passed on December 31, 1849, the resolution before referred to. There was, at the time, an equal number of free states and of slave states; so that the main question was equally balanced in the Senate. And in each house of Congress, there was eager desire for, and determined opposition to, the extension of slave territory.

Prior to the annexation of Texas, the free states were outgrowing the slave states in territory, population, power and wealth. When that vast independent state, of seven times the extent of Pennsylvania, came in as a slave state, reserving the right to be divided into five states, it presaged a great preponderance of the slaveholders, and caused deep anxiety to the free-soilers, for it seemed to threaten an enlargement and perpetuity of an "institution" under the protection of the Constitution, which the latter regarded as a menace to the welfare of the nation, and which they hoped might in a reasonable time be abolished. The acquisition of California, adjacent to Texas (for California, as then understood, included everything as far east, at least, as Salt Lake City) was designed to immensely enlarge the slave-holding territory. Such result was regarded by the opposition, with the utmost jealousy, and so was stubbornly resisted. President Polk, having favored the annexation of Texas, and active in prosecuting the war with Mexico, ending with the acquisition of this large domain, was naturally thought by the free-soilers to have been covertly shaping affairs in California so as to bring it into the Union as a slave State. This is plainly indicated in the resolution of the House of Representatives. The published state documents, called out by that resolution, prove that such apprehension was quite unfounded; and yet the passage of the resolution as it turned out, served a most valuable purpose, for if sought to rake the state archives to bring to light and put before the world what seems to exhibit every line of correspondence in the executive department, touching the acquisition of California, during the term of President Polk's administration, extending also into the first part of the term of President Zachary Taylor.

By the paper of May 14, 1846, above mentioned, Secretary Marcy informs Kearny that Mr. G. T. Howard is the bearer of a communication "to the caravan of traders en route to Santa Fe, and he must overtake them with the least possible delay," and requires Kearny to furnish Howard with a detachment of dragoons, sufficient in strength to insure his safety through the country.

By another letter to Kearny of May 27th, Mr. Marcy advises him of the religious prejudices of the Mexican inhabitants of Santa Fe and its vicinity, against the United States, and authorizes assurances to be given "that their religious institutions will be respected, the property of the church protected, their worship undisturbed—in fine, that all their religious rights will be in the amplest manner preserved to them." In a letter of June 3rd, 1846, Secretary Marcy writes to Kearny that "it has been decided by President Polk to be of the greatest importance in the pending war with Mexico, to take the earliest possession of Upper California. An expedition with that view is hereby ordered, and you are designated to command it. . . . This additional force of a thousand mounted men has been provided, to follow you in the direction of Santa Fe to be under your orders. . . . In case you conquer Santa Fe . . . provide for retaining safe possession of it—garrison it, and with the remainder press forward to California," and he is "authorized to make a direct requisition for still more troops upon the Governor of Missouri"; further, he is "desired to use all proper means to have a good understanding with the body of Mormon emigrants en route to California for the purpose of settling the country"; and he is also "authorized to muster into service as many [Mormons] as one-third of your entire force"; that "a considerable number of American citizens are now settled on the Sacramento river, near Sutter's establishment, called Nueva Helvetia, well disposed towards the United States." . . . "A large discretionary power is invested in you"; "the choice of routes to enter California" is left to Kearny.

"It is expected that the naval forces of the United States which are now, or will soon be in the Pacific, will be in possession of all the towns on the sea-coast, and will co-operate with you in the conquest of California; arms, ordnance, munitions of war, and provisions to be used in that country will be sent by sea to our squadron in the Pacific, for the use of the land forces." "Should you conquer and take possession of New Mexico and Upper California, or considerable places in either, you will establish temporary civil government therein—abolishing all arbitrary restrictions that may exist, so far as it may be done with safety,' . . . 'and continue in their employment all such of the existing officers as are known to be friendly to the United States, and will take the oath of allegiance to them." "The duties at the custom-house ought at once to be reduced to barely sufficient to maintain the necessary officers, without yielding any revenue to the government.' . . . 'Assure the people of the wish and design of the United States to provide for them a free government similar to that in our territories.' . . . 'They will then be called on to elect their own representatives to the territorial legislature."

"It is foreseen that what relates to the civil government will be a difficult and unpleasant part of your duty, and much must necessarily be left to your own discretion," and "you will act in such a manner, as best to conciliate the inhabitants and render them friendly to the United States.' 'The usual trade

between the citizens of the United States and the Mexican provinces should be continued as far as practicable," etc.

"You will be furnished with a proclamation in the Spanish language, to be circulated among the Mexican people on entering into or approaching their country. . . . You will use your utmost endeavor to have the pledges and promises therein contained, carried out to the utmost extent."

"I am directed by the President to say that the rank of Brevet Brigadier-General will be conferred on you as soon as you commence your movement toward California, and sent around to you by sea or over the country, or to the care of the commandant of our squadron in the Pacific. In that way, cannon, arms, ammunition, and supplies for the land forces will be sent to you." This is dated June 3rd, 1846, and is still addressed to Colonel S. W. Kearny, Fort Leavenworth, twenty-four days after the battle of Palo Alto of May 8th, 1846—the first battle of the war.

The communication is marked "confidential"—but it is now of national interest as disclosing how support of this overland army was anticipated by our government in sending in advance to meet them, "the naval forces (which Secretary Marcy says) now or soon will be in the Pacific, and will be in possession of all the towns on the sea-coast, and will co-operate with you (Kearny) in the conquest of California."

The foregoing quotations may be taken as samples of many documents relating to California emanating from the respective departments in the beginning and course of the war and down to the organization of the State. They are cited to show the sagacity which marked the whole proceeding. They explain how land and naval forces got along, with no means of rapid transcontinental communication between this Coast and the War Department short of several months; and yet it came to pass that our squadron, after a leisurely stay in ports along the coast, timed it so nearly right as to have ships and armies meet at Monterey and take the town and plant our flag on the old Mexican custom-house on July 7th, 1846; that day giving official date to the acquisition of California. The old custom-house still remains in its pristine pride, and the flagstaff which first bore the colors and official honors of "Old Glory" in California, is divided into sections which are sacredly preserved in the hall of the Society of California Pioneers, and in the State Mining Bureau at San Francisco.

How that flag was kept afloat, by the valor and patriotism of our army and navy, it is not the present purpose to recount; suffice it to say that the numbers opposing us and their means of resistance were very slim; besides, as a matter of fact the native people rapidly became reconciled to the new condition of things.

The Americans in furtherance of their published proclamation of safety and protection of person, property and religion to all peaceable inhabitants, verified that assurance by their acts of kindness and good will; paying for

whatever they took in the way of supplies; thus making money more plentiful; and it is no strain of imagination to think that the sudden ingress of so many young, strong, heroic, handsome fellows, was not without a pleasant effect upon the minds of the ladies of the land, to say nothing of the charm of the dazzling uniforms of the graceful, polite and cultured officers, whose native impulses that way had been quickened by orders from the War Department to make themselves as agreeable as possible—which orders turned out to be supererogatory, for on a short acquaintance, the ladies of the Departmental capital, proved to be not only fascinating, but irresistible—as did many later marriages attest.

Immediately after raising our flag, the fast assembling land forces under Fremont, with some of the Bear Flag captors of Sonoma, and Kearny's regiments and others—the arrival of further troops by sea, including the J. D. Stevenson regiment, soon made the conquest of California an established fact, in which the inhabitants, finding themselves prosperous and happy, seemed cheerfully to acquiesce.

On review, it seems probable and safe to believe, that the pleasing excitement and flush times which attended the discovery of gold, caused a diversion of the popular attention from all questions of politics and change of flag, to the more safe and profitable employment of gathering wealth, more rapidly than their brightest dreams had ever pictured; besides all of which, their new condition was so peaceful, the new government rested so lightly over all the land—almost unfelt—they must soon have become reconciled to a change so beneficial.

This was the condition of the people which followed by progressive steps, the capture of California as above related. It made the management of the civil government much more simple and easy than it might have been, had conditions been otherwise.

It is said by General Grant in his memoirs, that the army officers engaged in the Mexican War, were all gentlemen, educated to their profession. This was eminently true of both army and navy officers who participated in the capture and early government of California.

Strange as it may seem, Congress, having then lately extended the revenue laws to California, Colonel Collier, the first collector, came not till November, 1849. Congress stopped there, and made no provision for a civil government; but rested content with the civil authority in the hands of the people, and municipal and judicial magistrates, under the ultimate jurisdiction of the Commanding Generals of the military department, who chiefly were Kearny, Mason and Riley, successively. How wisely and how well they performed those functions we may not now eulogize as they deserve; but some future historian will, we trust, emblazon their just and patriotic deeds on immortal pages.

From the confusion incident to the sudden change of flag, all the municipal and departmental records of the former government fell into great disorder,

they were scattered, and many of them lost; besides the further embarrassment of their being written wholly in the Spanish language, which was understood by very few of our people.

A week after the raising of our flag on July 7th, 1846, there sailed from New York, the United States transport ship Lexington, with military officers and above one hundred troops and stores for California, arriving at Monterey, January 26th, 1847, under Captain C. Q. Tompkins, master.

The army officers aboard were Lieutenants William T. Sherman, E. O. C. Ord, Lucien Loeser, Colville J. Minor and H. W. Halleck, all graduates of West Point, and of some military experience; and Dr. James L. Ord, then a late graduate of Jefferson Medical college, Philadelphia, who bore the commission of physician and surgeon for these officers and troops of the ship. He used to relate with a proper degree of self-satisfaction, that on the next day after their arrival at Monterey, every man who started on that voyage, was with them in sound health, and that the officers, with their men shouldering arms and knapsacks, marched into the town and relieved the marines then in charge, who returned to their ships in port.

The officers just named, were all young men, who had already seen some hard military service in the Seminole Indian War in Florida, and elsewhere. They became very active and efficient factors under the government of the newly acquired territory, in various capacities. This appears in the report of President Taylor, showing their map of Lower California, with its towns, and the bays and islands in the Gulf of California. With the map, there is also a full report descriptive of the people, the soil, climate and productions of the country, surpassing in fullness, anything since written in connected form. One of those officers also became Secretary of State, in charge of the public archives under the military Governors; and all of them, and many others, appear in the President's report, as conserving good order, in subduing hostile Indians and aiding the alcaldes in the arrest and punishment of criminals and outlaws.

INSTRUCTIONS, PROCLAMATIONS AND ORDERS.

A brief notice of some of the orders and proceedings of the military-civil Governors, their proclamations, and the instructions under which they acted, may serve as samples of all they did in the line of civil government from July, 1846, to December, 1849.

Soon after his arrival, Lieutenant H. W. Halleck was employed by the successive Governors in the civil department as secretary of the Territory of California, including the care, collation and arrangement of the records and papers of the former government, and he also "in his proper profession as an engineer officer, acquitted himself with great credit in every situation"—as the military-civil Governor, R. B. Mason expressed it in his report to the War Department under date of December 27th, 1848.

We must omit the good things said in the same report of other officers, and of their services, including the punishment of hostile Indians. Colonel Mason says in the same report, after describing his visit to the mines, "that several most horrible murders have of late been committed in this country," describing the massacre of ten persons, men, women and children, at the mission of San Miguel, doubtless by white men; no mention of any arrests. He speaks of three men being "hung in Pueblo de San Jose, for assault with intent to kill, and for robbing the assaulted, who were bringing gold from the mines. On complaint to the alcalde at San Jose, three of the assailants were arrested, tried before a jury, who convicted them." The evidence against them was clear, so they were sentenced to death by hanging; the sentence was executed on Monday last. "You are aware that no competent civil courts exist in this country, and that strictly speaking there is no legal power to execute the sentence of death." The Governor adds to the above: "I shall not disapprove of the course that was taken in this instance, and shall only endeavor to restrain the people, so far as to insure to every man charged with a capital crime, an open and fair trial by a jury of his countrymen."

And touching the San Miguel crimes and the murder of Mr. Reed's family, the Governor reports: "I despatched Lieutenant Ord with a couple of men, to that mission to ascertain the truth, and if need be, to aid the alcalde in the execution of his office." Colonel Mason closes his report of December 27th, 1848, at Monterey, with this:

"The latest dates from the departments are of the 18th of April, brought out by the ship Huntress; and to illustrate how completely we are cut off from any communication with the United States, I will merely mention that Major Graham's command received orders and marched across the continent, bringing with them the first intelligence of their coming."

The Indian agents then, as now, were appointed by the authorities in Washington, but they were entirely under the direction of the Governor, who appointed assistants where necessary.

And so, with the custom-house officers, as appears by his "circular" of June 1st, 1847. "R. B. Mason, Colonel First Dragoons, Governor of California," directs that "the military officers of Upper California, who have been directed to settle the accounts of the custom-house officers, etc., to receive from them the funds arising from the customs" will keep an account with these headquarters, apart from all other public funds in their possession. "These funds will be applied only upon the order of the Governor, to the civil department of California."

It appears that General Kearny left California for the East, May 31st, and Colonel Mason took charge as Governor on June 1st, 1847, when he issued the above circular—and the next day he is giving the alcalde of Sonoma some aid and comfort as to the duties of his office, promising him the necessary military aid; and adds that he having been only two days in office as Governor,

is not prepared to define the extent of the alcalde's powers and jurisdiction, and adds, "You must, for the time being, be governed by the customs and laws of the country, and by your own good sense and sound judgment."

The Governor regrets that he cannot afford any greater mail facilities than the military express, which has been established once in two weeks between San Francisco and San Diego, which carries the letters and papers for all persons free of charge."

The foregoing, taken promiscuously from hundreds of the like examples, will serve to show that the office of Governor of California was one of unlimited scope—and that it was one of great care and labor, which required both readiness and vigor of judgment; and that those duties were performed by each and all of those Governors and all officers under them, with distinguished ability and with perfect purity of motive, with an eye single to the highest public good. In fact, it seemed to have been their only purpose and intention to carry out in good faith, all that had been promised in the several proclamations to the Mexican people, in the way of freedom, justice, protection and rights, to be enjoyed by them equally with all other citizens of the United States.

These promises, so faithfully performed, resulted in the cheerful acquiescense and co-operation of the inhabitants in the administration, until and including the fully organized government of the new State of California.

It will be sufficient to give the date and substance of a few of a multitude of orders, etc., of the military Governors, taken promiscuously, which may serve as samples of a thousand similar ones. Most of Governor Mason's papers run thus: "Governor Mason directs me," thus and so, concluding thus: "I have the honor to be, very respectfully, your obedient servant, W. T. Sherman, First Lieut. Third Artillery, A. A. A. General."

Governor R. B. Mason appoints John Foster an alcalde in the District of San Juan, embracing the ranches of San Juan, San Luis and Pala, in Upper California. July 14th, 1847.

Governor Mason promises Alcalde George Hyde he will soon come up to San Francisco from Monterey to adjust the survey of 100 vara lots or else will appoint commissioners. Dated July 14th, 1847.

Governor Mason informs Don Miguel de Pedrorena, collector of customs at San Diego, that his salary will be at the rate of $1000 per annum, "provided revenue to that amount be collected and received in your office."

"Edwin Bryant, Esq., is hereby appointed alcalde of the town of Yerba Buena and of the District of San Francisco, vice Lieutenant W. A. Bartlett, who returns to his naval duties.

"Given at Yerba Buena, Upper California, this 22nd day of February, 1847, and in the seventy-first year of the independence of the United States.

"S. W. KEARNY,

"Brigadier-General, United States Army."

"Know all men by these presents, that I, Richard B. Mason, Colonel First Dragoons, United States Army and Governor of California, by virtue of authority vested in me, do hereby appoint J. S. Hunter a sub-Indian agent for the Indians in the lower district of Upper California.

"Given at Santa Barbara, Upper California, this 1st day of August, 1847, and the seventy-second of the independence of the United States.

"R. B. MASON."

The Governor ordered municipal elections at different times and places, set aside those he deemed irregular, ordered elections for prefects and sub-prefects, etc., too numerous to even refer to here in detail; appoints numerous notary publics at San Francisco and other places.

Captain John A. Sutter, under date of July 12th, 1847, writes from New Helvetia to Governor Mason, recounting outrages at three places widely separated, perpetrated on peaceful Indian camps, murdering some and carrying away some as slaves; that he has ordered complaints made to the local alcaldes, and asking written instructions from the Governor, as to how he as sub-Indian agent, is to act in these cases, and in the general management of the Indians.

The Governor replies, July 21st, expressing regrets at the outrages; he directs Captain Sutter "to call on the military officer near you for all the assistance in his power to afford," adding "when arrested I will organize a tribunal for their trial, and if sentence of death is passed upon them, I will see it executed," . . . and directs Captain Sutter to restore the captured Indians to their people," etc.

August 19th, 1847, Governor Mason sent a commission to General Vallejo and Captain Sutter to hold a special court for the trial of Armijo, Smith and Eggar, charged with committing the outrages on the Indians mentioned by Sutter, (with particular directions for a fair trial).

In Robidoux vs. Lease, in June, 1847, Governor Mason refused a change of venue, a second time, the case being in the alcalde's court, giving good, lawyer-like reasons.

STOCKTON'S PROCLAMATION.

Commodore Sloat left California for the Atlantic states on July 22nd, 1846 (some fifteen days after raising the flag at Monterey), leaving Commodore Stockton in command of his squadron.

Commodore Stockton, on August 17th, 1846, issued a proclamation to the people of California, saying, "it is soon to be governed by laws and officers similar to those of other territories—but until the Governor, the Secretary and Council are appointed, . . . military law will prevail, and the commander-in-chief will be the Governor and protector of the territory."

The proclamation "requests the people in the meantime to meet in their several towns and departments when they see fit, to elect civil officers, to fill the places of those who decline to continue in office, and to administer the laws according to the former usages of the territory. In all cases where the people failed to elect, the commander-in-chief and the Governor will make the appointments himself."

MARCY TO KEARNY.

Mr. Marcy, Secretary of War, under date of January 11th, 1847, writes to "Brigadier General S. W. Kearny, commanding in California," saying:

"The war with Mexico exists by her own act and the declaration of the congress of the United States; that the possession of the enemy's territory acquired by justifiable acts of war, gives us right of government during the continuance of the possession, and imposes on us a duty to the inhabitants, who are thus placed under our dominion." He shows that if the conquest is approved by subsequent treaty, 'then the imperfect title acquired by conquest is made absolute, and the inhabitants are entitled to all the benefits of the federal constitution, to the same extent, as the citizens of any other part of the Union."

"During our military possession, the inhabitants should be permitted to participate in the selection of agents to make or execute the laws to be enforced."

GENERAL KEARNY'S PROCLAMATION TO THE PEOPLE OF CALIFORNIA.

This paper is dated at Monterey on March 1st, 1847, in which he says in his opening words:

"The President of the United States, having instructed the undersigned to take charge of the civil government of California"—he adds that his instructions are to respect and protect all religious rights, property and institutions, etc., and to see that they are preserved to the people in the amplest manner. That until further legislation by congress, the existing laws will be continued until changed by competent authority; and "those who hold office will continue in the same for the present," providing that they swear to support the Constitution, etc. The proclamation continues, saying, "when Mexico forced war upon us, we had no time to invite Californians as friends, to join our standard, so that we were compelled to take possession of the country to prevent any European power from seizing upon it. The Americans and Californians are now but one people."

KEARNY GRANT.

On March 10th, 1847, General Kearny granted "to the town of San Francisco, the people or corporate authorities thereof, all the right, title, and interest of the government of the United States and of the territory of California in and to the beach and water lots on the east front of the said town," etc. This purports to have been done "by virtue of the authority in me vested by the President, etc." Of course that act was void for want of power to make it. But the State legislature of California, by Act of March 26th, 1851, confirmed the grant for ninety-nine years.

On March 27th, 1847, General Kearny ordered Colonel R. B. Mason

to proceed to the Southern Military District of this territory, at Los Angeles, to inspect the troops in that quarter. "You are hereby clothed with full authority to give such orders and instructions, in that country, upon all matters whatever, both civil and military, as in your judgment you may think conducive to the public interest."

A note by Kearny, dated next day after the above order, was addressed to Colonel Fremont, at Los Angeles. The latter about those days, was himself claiming to be Governor of California; but that claim was not sustained by the naval or military officers present, nor by the administration.

DIVORCES.

A married couple applied to an Alcalde for a divorce. The alcalde consulted General Kearny. He advised the alcalde as follows: "That the husband and wife each should choose an arbitrator; and the two thus chosen must choose a third, then let the three arbitrators, in your presence, hear what both parties have to say, and decide whether the parties [naming them] shall be separated, for three, six, or twelve months, if separated at all." Could the wisdom of Solomon excel that judgment?

On May 28th, 1847, General Kearny appointed George Hyde alcalde of the District of San Francisco vice Edwin Bryant, resigned. Mr. Hyde, soon after this appointment, was elected alcalde by vote of the people of the town.

The governor ordered municipal elections at various times and places for prefects, sub-prefects, etc.; he also set aside other elections for irregularity. On July 14th, 1847, Governor Mason appointed "John Foster as alcalde for the District of San Juan, embracing the ranches of San Juan, San Luis and Pala in Upper California."

In Robidoux v. Lease, in June, 1847, Governor Mason refused a change of venue a second time, the case being in the alcalde's court; giving good lawyer-like reasons for refusal.

GOVERNOR MASON PROCLAIMS PEACE.

On August 7th, 1848, "Colonel R. B. Mason, Colonel First Dragoons, Governor of California," makes public proclamation of the ratification of the treaty of peace, and friendship between the United States and Mexico, by which Upper California is ceded to the United States. He says, that until we shall have a regularly organized territorial government, the present civil officers will continue in the exercise of their functions as heretofore, and when vacancies shall occur, they will be filled by regular elections held by the people.

Mr. Marcy says to Colonel Sterling Price, in letter of June 11th, 1847: "The temporary civil government in New Mexico results from the conquest of the country. It does not derive its existence directly from the laws of congress, or the constitution of the United States, and the President can not,

in any other than that of Commander-in-Chief, exercise any control over it. It was first established in New Mexico, by the officer at the head of the military force, sent to conquer the country under general instructions contained in the communication from this department of the 3rd of June, 1846. Beyond such general instructions, the President has declined to interfere with the management of the civil affairs of this territory." This letter is addressed to the "officer commanding the United States forces, at Santa Fe, New Mexico."

Here, again, is an attempt to define the status of the military authority, relating to civil laws, unrepealed, which were admittedly in operation in all local municipal affairs, at least. New Mexico and California were both in the same legal condition. The validity of the local municipal laws, is practically acknowledged retrospectively, in recognition of the alcalde grants of town lots, by the various alcaldes in San Francisco, and also in the other pueblos from 1846 to 1849, and also by the recognition of a title to a parcel of 500 acres of the pueblo lands of San Jose, granted by an alcalde (the Chiboya claim); and the like recognition of title to a half-league of pueblo land, of Los Angeles, granted by the alcalde of that pueblo (the Rocha claim—9 Wallace, 647). The law did not change, though land values, almost nominal at the times of the grants, rose enormously before the date of final decisions thereon by the Supreme Court of the United States.

ALCALDES AND EARLY LAND GRANTS.

In all the principal towns in California, including San Diego, Los Angeles, Santa Barbara, San Jose, San Francisco, Sonoma and some others, perhaps, the alcaldes were elected by the inhabitants of the place; and in case of a vacancy, for any cause, in that office, it was filled by the Governor. The alcaldes, respectively, of those pueblos were the well recognized heads of the municipality.

By the laws and customs of Mexico, those towns or pueblos, as they were called, were entitled to pueblo lands, usually to the extent of four leagues to each pueblo, for the use and benefit of the inhabitants.

They were usually distributed to the inhabitants, by grants of lots, as needed. Grants were made by the alcaldes. Such was the practice in San Francisco, where the practice began as early as 1836 and continued down to the passage of the first city charter enacted by the legislature of the State, April 15th, 1850.

For a while before the charter of 1850 went into effect, town lots were sold at public auction by order of the town council; the deeds were made to the purchasers by the alcalde, in the name of the town. It is believed that such was the practice of distributing town lots by alcalde grants in all the other pueblos of California.

The alcaldes, under the new regime, who succeeded the first two already named, *i. e.*, Bartlett and Bryant, were George Hyde, Thaddeus M. Leaven-

worth, and John W. Geary. They were all elected by the inhabitants of the town. They all granted town lots. Those grants were entered of record by them. The books containing the grants compose the record title of such lots, derived from the town and are a part of the city land titles in the official custody of the county recorder.

For a full and particular account of all the grants of town (or pueblo) lots made by the alcaldes, ayuntamientos or other municipal authorities of the pueblo, town or city of San Francisco from the year 1836 to 1851, the reader is referred to "Wheeler's Land Titles." It is an abstract from the official records, made under the direction of the Town Council. It shows the date of grant or sale; description of every lot granted; the name and title of the officer or authority by which the grant was made.

CALL FOR A CONSTITUTIONAL CONVENTION.

General Riley, the Governor, on June 3, 1849, issued his proclamation for holding a special election August 1st, next, "for the election of delegates to a general convention, and for filling the offices of judges of the Superior Court, prefects and sub-prefects, and all vacancies in the office of first alcalde (or judge of first instance), alcaldes, justices of the peace and town councils."

The Governor puts the reasons for his call on the ground that "congress has failed to organize a new territorial government." . . . "so that it becomes our imperative duty to take some active means to provide for the wants of the country." . . . "by putting in full vigor the administration of the laws as they now exist, and completing the organization of the civil government by the election and appointment of all officers recognized by law," . . . "and a convention to meet and frame a State constitution or a territorial organization," to be ratified by the people and by congress. He repels "the impression that the government of the country is still military. Such is not the fact. The military government ended with the war, and what remains, is the civil government, recognized in the existing laws of California."

"Although the command of the troops in this department and the administration of civil affairs in California are, by the existing laws of the country and the instructions of the President of the United States temporarily lodged in the hands of the same individual, they are separate and distinct."

"No military officer, other than the commanding general of the department, exercises any civil authority by virtue of his military commission; and the powers of the commanding general as ex-officio governor, are only such as are defined and recognized in the existing laws."

"The instructions of the Secretary of War, make it the duty of all military officers to recognize the existing civil government, and to aid its officers with the military force under their control." "The existing laws of the country must continue in force until replaced by others made and enacted by competent power."

On September 19, 1849, Governor Riley tells E. O. Crosby, Thomas O. Larkin, and others, a committee of the constitutional convention, that the "accounts and affairs of the convention, should be certified by the president of the convention *as just and true, and authorised by the convention*; then on receiving my written approval, they will be paid by the civil treasurer, or his agents." The "civil treasurer" meant the keeper of custom-house receipts, etc. All monies so collected went not into the national treasury, but went to pay local expenses of California.

Had the author of the opinion in Woodworth v. Fulton (1 Cal. Rep., decided December, 1850) read this opinion of General Riley, and those of the other generals, and the opinions of Secretary Marcy and Secretary Buchanan, above quoted, that opinion would never have been pronounced. Then the city would not have suffered the stunning effects of that decision, till it was finally corrected by the proper one in Cohas v. Raisin, some two years later. (3 Cal. 443.)

The foregoing copies and extracts of official papers, are proffered, in evidence of the ardent purpose of the administration and its officers, to make our government both agreeable and profitable to our newly-adopted fellow-citizens.

The same spirit of peace and good will is manifest in every act and order of the officers who were expected to carry such policy into execution. The calm and unpretentious tone in the correspondence of these officers, with their subordinates, is worthy of imitation. Their kind and courteous intercourse with the officers of the naval squadron, brought the two arms of the service in perfect accord in all things they undertook in the conquest and government of this territory.

The exceptional breach of such kindly intercourse among officers of the army and navy arose between Kearny and Fremont in 1847, from the question, which was governor, *i. e.*, was it Kearny under the President's order of 1846, or was it Fremont, under Stockton's appointment in July, 1847.

It is foreign to present purposes to discuss the merits of that bitter quarrel, which aroused a contest of the parties and their friends, including cabinet officers, senators and others, of a very serious nature.

After California came into the possession of the United States, the alcaldes, Judges of First Instance, prefects, etc., in some of the principal settlements, continued to exercise their wonted functions as nearly as they could, in conformity to the Mexican civil laws and customs; which, of course, were still unrepealed, and therefore unaffected by the change of flags. But more often the places of the native officers were filled by new-comers from "the States," while in the mines, where was the mass of population after mining began, the miners appointed their own alcaldes from their own number, and they, with the aid of a jury, when demanded, tried mining suits, criminal cases and the like, in general conformity to court procedure; and so administered justice with celerity, in a spirit of real fairness, and to the satisfaction of the com-

munity. There were exceptions to the calm jury-trial practice, in some of the mining camps, where capital punishment was visited on certain criminals; and scarcely less harsh and severe penalties were inflicted on others, without the form of a deliberate trial. It was to avert such consequences that alcaldes at times meted out severe correction.

The foregoing outline of California's history may prove useful to readers who desire to understand some of the chief events as they occurred in connection with the Mexican War, as it related to the acquisition of the State, and to show their relation to each other, and to the respective movements in Mexico and in California, as parts of a broad and general plan of action.

It indicates the vast powers confided, tacitly, not explicitly, to the military officers here, and shows the remarkable wisdom, patriotism and fidelity with which those duties were performed. It suggests that such duties, committed to talented, well-trained men, educated in our military and naval schools, are regarded by them as a sacred trust, never to be neglected or violated.

We have pointed to a reservoir of precedents, which may be useful to all who have a part in public rule, who may be dependent on their knowledge and mental resources to guide them in their fields of action.

The thoughtful statesman cannot study, without admiration and wonder, the even temper, the sustained moderation, with which our army officers for nearly four years, in the absence of legislation and almost beyond reach of the paramount authorities, administered all military and civil affairs in the vast and conquered country.

——*SAMUEL W. HOLLADAY.*

San Francisco, Cal., December 1, 1900.

JAMES BUCHANAN'S OPINION ON SOME CONSTITUTIONAL QUESTIONS.

In the autumn of 1848, the Postmaster-General appointed William Van Vorhies "an agent under the act to establish certain postal routes" in California, approved August 14, 1848.

As Mr. Van Vorhies was about to start for California on that mission, he received a letter of instructions from James Buchanan, then Secretary of State under President Polk; the letter bearing date October 7, 1848, saying to Mr. Van Vorhies, among other things: "The President has instructed me to make known, through your agency, to the citizens of the United States inhabiting that Territory, his views respecting their present condition and future prospects."

"The President congratulates the citizens of California on the annexation of their fine province to the United States." . . . "On the 30th of May, 1848, the day on which the ratifications of our late treaty with Mexico were exchanged, California finally became an integral portion of this great and glorious republic; and the act of Congress to which I have already referred, in express terms recognizes it to be within the territory of the United States."

After some further congratulations upon their annexation, the letter says:

"Under such a constitution and such laws, the prospects of California are truly encouraging."

"The President deeply regrets that Congress did not at their late session, establish a territorial government for California." . . . that he "is convinced that Congress will at an early period of the next session provide for them a territorial government, suited to their wants." . . .

"In the meantime the condition of the people of California is anomalous, and will require, on their part, the exercise of great prudence and discretion.

"By the conclusion of the treaty of peace, the military government which was established over them under the laws of war, as recognized by the practice of all civilized nations, has ceased to derive its authority from this source of power.

"But is there, for this reason, no government in California? Are life, liberty and property under the protection of no existing authority? This would be a singular phenomenon in the face of the world, and especially among American citizens, distinguished as they are above all other people for their law-abiding character. Fortunately they are not reduced to this sad condition. The termination of the war left an existing government, a government *de facto*, in full operation; and this will continue with the presumed consent of the people, until Congress shall provide for them a territorial government. The great law of necessity justifies this conclusion. The consent of the people is irresistibly inferred from the fact that no civilized community could possibly desire to abrogate an existing government, when the alternative presented would be to place themselves in a state of anarchy, beyond the protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest. This government *de facto* will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land. For this reason no import duties can be levied in California on articles, the growth, produce, or manufacture of the United States, as no such duties can be imposed in any other part of our Union on the products of California. Nor can new duties be charged in California, upon such foreign productions as have already paid duties in any of our ports of entry, for the obvious reason that California is within the territory of the United States."

After dilating on the peaceful and prosperous conditions of California, the postoffice laws extended to California; the contemplated "monthly steamers on the line from Panama to Astoria, to stop and deliver and take mails at San Diego, San Francisco, and Monterey," that "appropriations have been made to maintain troops to protect the inhabitants against all attacks from civilized or savage foes," etc., etc., the letter adds:

"But, above all, the Constitution of the United States, the safeguard of all our civil rights, was extended over California on the 30th of May, 1848, the day on which our late treaty with Mexico was finally consummated.

"From that day its inhabitants became entitled to all the blessings and benefits resulting from the best form of civil government ever established amongst men. . . .

"A considerable portion of the population of California were Mexican citizens before the late treaty of peace. These, our new citizens, ought to be, and, from the justice and generosity of the American character, the President is confident that they will be, treated with respect and kindness, and thus be made to feel that by changing their allegiance they have become more prosperous and happy."

In the opening lines of the foregoing letter, Mr. Buchanan says that the President has instructed the writing of it (in effect) to the people of California. Doubtless it reflects the united counsels of President Polk and his entire cabinet, composed as it was, of wise and great men. In anticipation of questions that may arise applicable to our lately extended dominions, it is hoped that some of the principles of government, adopted by President Polk and his cabinet, may be found applicable to these later strains upon the Constitution.

—*SAMUEL W. HOLLADAY.*

THE BIRTH OF THE COMMONWEALTH

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The BIRTH *of the* COMMONWEALTH

Half of a century has passed since there met in old Monterey a distinguished body of men, who gave California her first fundamental law as a commonwealth of the United States of America. Those pioneers of the Pacific, together with their generation, have with hardly an exception gone to their long home. The days of '49—thrilling, epoch-making, unique—can never be reproduced.

The seizure of California was a most important act in the drama of our war with Mexico. Tidings of peace were received by General Riley, August 6, 1848. Under the military rule of Governor Mason many of the American settlers had become exceedingly restive in the absence of a regular civil government. Now that the Treaty of Guadelupe Hidalgo left California an integral part of our national domain the settlers became even more clamorous for civil organization based upon American principles. In the meantime the discovery of gold almost infinitely increased the need for organized government and the more perfect administration of justice. In those days of gold there was among lovers of law and order—be it said to their honor—much genuine solicitude for California's future.

Repeated failures of Congress to provide suitable organization, because of the burning question of slavery extension, greatly increased the gravity of the situation and multiplied the embarrassing difficulties of the *de facto* Governors. California was filling up with a heterogeneous tide of adventurers and fortune-hunters from all lands; the gaming-table was rapidly breeding drunkenness and crime; law was almost wholly wanting, justice was being defeated and villainy was fast becoming rampant. California, now "to be morally and socially tried as no other American community ever has been tried," became the focus of the world's attention. It is little cause for surprise, therefore, that patience was at length exhausted, and that the people, true to their Anglo-Saxon instinct and training, without waiting longer for Congress or Governor, initiated a widespread movement looking toward civil government.

The first provisional government meeting was held in Pueblo de San Jose, December 11, 1848. This enthusiastic gathering unanimously recommended that a "general convention for the purpose of nominating a suitable candidate for Governor, and for such other business as may be deemed expedient be held at the Pueblo de San Jose on the second Monday in January next." Three delegates, Messrs. Dimmick, Cory, and Hoppe were chosen. At San Francisco a similarly enthusiastic meeting was held, and similar recommendations were adopted, the date of the proposed convention, however, being fixed at the first Monday in March, 1849. Several other dates were subsequently recommended by various district meetings; but finally the first Monday in August, a date remote enough to allow the southern district to be represented in those days of slow communication and travel, was conjointly agreed upon.

On February 12, the people of San Francisco, in mass meeting assembled, established a temporary government for that district under circumstances that would seem to render such action both logical and justifiable. Thus arose the "Legislative Assembly of San Francisco," comprising among its fifteen members some whose talents were of the highest in California. The just motives of these select men cannot be questioned, neither can their unceasing loyalty to the United States be impeached. In default of necessary officials there were also chosen three magistrates, a treasurer and a sheriff. The population of San Francisco which in March, 1848, numbered 812 souls, had increased by February, 1849, to some 2,000, and by July to upwards of 5,000.

In the midst of these preparatory movements for civil organization, General Bennett Riley arrived, April 12, on board the Iowa, and the following day relieved Colonel Mason as acting Governor of California. Cognizant of the movements of the people for organization, he awaited, with such patience as circumstances would permit, news of Congressional action. Immediately on learning of the third failure to provide for the civil government of California he issued a carefully drawn proclamation, dated June 3, "defining what was understood to be the legal position of affairs here, and pointing out the course it was deemed advisable to pursue in order to procure a new political organization better adapted to the character and present condition of the country." The proclamation contained the following important provisions: "In order to complete this organization with the least possible delay, the undersigned in virtue of the power in him vested, does hereby appoint the 1st of August next as the day for holding a special election for delegates to a general convention, and for filling the offices of Judges of the Superior Court, prefects and sub-prefects, and all vacancies in the offices of first alcalde (or Judge of first instance), alcaldes, justices of the peace and town councils. The general convention for forming a State constitution or plan for territorial government will consist of thirty-seven delegates, who will meet in Monterey on the 1st day of September next."

Meanwhile General Riley had been made aware of the existence and force of the San Francisco legislative assembly, which had been assuming new and more extended powers. The assembly did not recognize any *civil* power as residing in General Riley, a military officer. Accordingly Riley's proclamation, appointing day and place for a constitutional convention, provoked no slight opposition; and the San Francisco legislative assembly, which had become the head and front of the settlers' movement, again took occasion to assert what it considered its undoubted right; "It is the duty of the government of the United States to give us laws; and when that duty is not performed, one of the clearest rights we have left, is to govern ourselves." The assembly even recommended a general convention to be held at San Jose on the third Monday in August, "with enlarged discretion to deliberate upon the best measures to be taken; and to form, if they upon mature consideration should deem it advisable, a State constitution to be submitted to the people." Almost simultaneously with the publication of this address Governor Riley issued a proclamation to the people of San Francisco, pronouncing the "body of men styling themselves the 'legislative assembly of the district of San Francisco," an illegal and unauthorized body, which had usurped powers vested solely in the Congress of the United States, and warning all persons "not to countenance said illegal and unauthorized body, either by paying taxes or by supporting or abetting their officers." It looked for the moment as if the legislative assembly had assumed an attitude of reckless defiance, but this was true only in appearance.

The people on the one hand and the *de facto* Governor on the other had now arranged for a general constitutional convention, the date and place conflicting. The opposing theories which for convenience may be called the Settlers' Theory and the Administration Theory, on the question of the legal status of California from the ratification of the treaty with Mexico to the adoption of the State constitution had now been clearly defined and respectively defended in the territory itself. Which side should give way?

Happily in this case the people were not sticklers for their alleged rights. What they desired was organized government; the end was paramount, the means of securing it secondary. Hence indications of satisfaction with and acquiescence in Riley's plans began almost immediately to manifest themselves. San Jose first expressed satisfaction, and other districts followed. The San Francisco legislative assembly, viewing with hopefulness the changing situation, finally recommended the propriety "of acceding to the time and place mentioned by General Riley, in his proclamation and acceded to by the people of some other districts." This was not deemed a concession of principle, but a matter of expediency, for the assembly still refused to recognize any rightful authority to appoint times and places as residing in General Riley. The quiet downfall of the assembly, which had remained loyal to the welfare of California to the last, was recorded the next week, July 19.

The controversy was at an end. The election of delegates to the conven-

tion elicited unanticipated interest in every district, the result in large measure of the special efforts of Generals Riley and Smith and Thomas Butler King. The native Californians of the southland showed unexpected cordiality, and even the miners turned aside to seek out suitable candidates. "It seemed, however," as Dr. S. H. Willey has said, "like a very odd idea for such a mass of strangers as were then in California, speaking in diverse languages, knowing little of each other's views, a great part of them men without families and in the country only for a temporary purpose, to go to work within a few months of the arrival of most of them, without any authority or encouragement from Congress, to set up a new State." Scheming of parties and political machinations were wanting, the earnest endeavor being to select competent men. By September 1, many of the delegates were in Monterey, but no quorum appeared at the Saturday meeting.

The convention organized on Monday, September 3, 1849, opening with prayer to Almighty God "for his blessing on the body in their work, and on the country." The meeting place was the upper story of Colton Hall, one of the most important buildings extant from the standpoint of our State history. The choice of Dr. Robert Semple, of Kentucky, for president seems to have been eminently wise. The key-note of the convention was struck when in his brief address he said: "We are now, fellow-citizens, occupying a position to which all eyes are turned. . . . It is to be hoped that every feeling of harmony will be cherished to the utmost in this convention. By this course, fellow-citizens, I am satisfied that we can prove to the world that California has not been settled entirely by unintelligent and unlettered men. . . . Let us, then, go forward and upward, and let our motto be, 'Justice, Industry and Economy.'" William G. Marcy was elected secretary, and J. Ross Browne reporter.

This convention, meeting under circumstances quite unique, presents a personnel of unusual interest. There were many Americans who had already rendered conspicuous service in laying the foundation of the commonwealth. The Hispano-Californians numbered seven, and there was one native each of Ireland, Scotland, Spain, France and Switzerland. Here was a body of men, not of national reputation nor of extraordinary learning, but for the most part disinterested, competent and zealous for the faithful discharge of their high commission. California's first constitution was not the sudden creation of unintellectual gold-hunters; for only six of the delegates had resided in California less than six months, while twenty-two, exclusive of native Californians, had resided here for three years or longer. With good reason Professor Royce declares: "Had these men of the interregnum not preceded the gold-seekers California would have had no State constitution in 1849."

The roll of members included Captain John A. Sutter, universally known for his hospitality and amiable qualities, whose fort at Sacramento had been for a decade the chief rendezvous of central California for the American

immigrants; Captain H. W. Halleck, then Governor Riley's efficient Secretary of State, and since distinguished in law, literature, and war; Thomas O. Larkin, widely known as the first and last American consul to California; Edward Gilbert, pioneer journalist and an early representative in Congress; William M. Gwin, undoubtedly the most distinguished politician of the convention, who had four months before come to California with the express purpose of securing his election to the United States Senate; and John McDougal, of Ohio, who became second Governor of the new State on the resignation of Burnett. The seven native Californians, a fair representation, comprised some of the best-known names of the old regime; General M. G. Vallejo, for many years known as the "most distinguished of living Hispano-Californians"; P. N. de la Guerra, the most accomplished and best-educated of the group; Jose Carrillo, intelligent, forceful, of pure Castilian blood, but somewhat prejudiced against the Americans; Antonio Pico, of distinguished family, shrewd if not always suspicious;—these, with the more obscure names of Manuel Dominguez, Jacinto Rodriguez, and J. M. Covarrubias, completed the group,—unless we add M. de Pedrorena, a native of Spain,—only two members of which spoke English with any fluency or readily understood it. All were treated with a high degree of respect, and to them were extended special courtesies.

We are indebted to J. Ross Browne, the reporter, for the "Debates in the Convention," with appendices, a volume invaluable to the student of our history. It was provided that the convention should be opened each day with prayer, the chaplains appointed being Rev. Padre Antonio Ramirez and Rev. S. H. Willey, both of Monterey. Dr. Willey has given us one of the best accounts of the convention, and has made other important contributions to our State history.

The obviously difficult task of constitution-making was undertaken by a body of perhaps the youngest men that ever met for a similar purpose, the average age of delegates being thirty-six years. Carrillo, the oldest, was fifty-three; Jones and Hollingsworth were each twenty-five. Browne assures us that "the body, as a whole, commanded respect as being dignified and intellectual"; and Bayard Taylor affirms that, "taken as a body, the delegates did honor to California and would not suffer by comparison with any first State convention ever held in our Republic. The appearance of the whole body was exceedingly dignified and intellectual, and parliamentary decorum was strictly observed." A summary would show fourteen lawyers, twelve farmers, eight merchants and traders, and one (B. F. Moore) gentleman of "elegant leisure." Fully awake to the importance of their labors and of their local position in national politics, the delegates as a body were, as Colton declared, raised "above all national prejudice and local interests," pouring their spirit in blending power over their measures.

A strong vote for State organization quickly disposed of the important preliminary question whether the assembly should form a State or Territorial

government. California has never been a regularly organized Territory of the United States.

The debates that occupied those builders of a commonwealth cannot be reviewed in detail in this paper; yet any sketch would fail of completeness that did not at least mention a few of the leading discussions that so powerfully tended to shape the very existence and destiny of our loved commonwealth. Myron Norton, chairman of the committee on the constitution, presented a declaration of rights borrowed almost entirely from the constitutions of New York and Iowa; and into this declaration Shannon of Sacramento moved to insert as an additional section: "Neither slavery nor involuntary servitude unless for punishment of crime, shall ever be tolerated in this State." Surprising as it may seem, this most vital section was unanimously adopted. The preponderance of sentiment in the convention, and much more in the territory at large, was favorable to the formation of a free State. Fifteen members had come from slave-holding States, but even radical Southerners were compelled to admit that Californian conditions were entirely unfavorable to the introduction of slave labor. To be sure, the passage of this section could not give a quietus to the absorbing question of slavery extension, in all its bearings throughout the vast newly acquired territory known as California; but the supreme step had been taken, the word had been uttered. So profound was the national influence of this vital decision that it is hardly an exaggeration to affirm with Dr. Willey that it was the "pivot-point with the slavery question in the United States." Our great commonwealth, entering the Union as the sixteenth free State, forever destroyed the equilibrium between North and South.

Deep interest was shown in the question of separate property for married women. Some of the arguments, amusing in themselves, throw a light on the social status of the country at that time. The proposed section was at length adopted, granting the wife power to hold separate property. This is believed to be the first time that such power was granted to women by a State constitution.

The debates on education showed a warm interest in the subject, and great unanimity in favor of establishing a well-regulated system of common schools. Liberal provision was therefore made, and the founding of a State university was contemplated by setting apart the income of lands.

The long debate on the question of California's boundary demands more than passing notice. This was by far the most animated discussion of the entire convention, a discussion, moreover, of the most profound significance as the most strictly sectional contest of the session. At the very last the constitution came dangerously near being totally wrecked.

The California ceded to the United States was vastly greater in its extent than our commonwealth, embracing as it did, the great desert east of the Sierra Nevada and the fertile country occupied by the Mormons; in other words, including all the present territory of California, Nevada, Utah, and

Arizona, and extending even into Wyoming, Colorado, and New Mexico, the Rocky mountains forming the eastern boundary. The committee on boundary reported that in its opinion all Mexican California, estimated at 448,691 square miles, was entirely too vast for one State, and recommended as an eastern boundary the one hundred and sixteenth parallel; that is, an arbitrary line intersecting eastern Nevada. Being referred to the committee of the whole, debate opened early September 22, and continued until late at night. Sundry amendments proposing various boundary lines were considered, the disagreement widened, differences were apparently irreconcilable.

There was no disguising the fact that at bottom it was to be the final struggle of the pro-slavery forces. Gwin proposed the eastern line lying between New Mexico and the Mexican cession, and took a leading part in the contest for the larger boundaries. Subsequent revelations seem to make it perfectly plain that the pro-slavery members hoped that by making the State so large it would soon be necessary to divide it by an east and west line, thus adding one State to the South. Francis Lippitt, writing on this point, said: "I was afterward informed that this boundary line had been adopted at the instigation of a clique of members from the Southern States, with the view to a subsequent division of California by an east and west line into two large States; and further to the future organization of the southern of these two State as a slave State—an event which would have been quite certain."

The controversy deepened. Extreme bitterness began to be manifested, for the friends of slavery realized that this was their last hope of forming a new slave State from the newly acquired territory. But the people of California had asserted themselves in unequivocal terms, the convention itself had pronounced positively against slavery, the intriguing of the few could not avail. On October 8, Hastings' substitute, proposing an intermediate line intersecting the Nevada desert, was quickly adopted, and ordered engrossed for third reading. But on McDougal's motion, a reconsideration was secured, and the advocates of the Sierra Nevada boundary again grew confident of success. Once more were they to be disappointed; great was their consternation when the committee report for the larger boundary was again concurred in by a vote of twenty-nine to twenty-two. Upon the announcement of the vote the utmost excitement and confusion prevailed. McCarver moved to adjourn *sine die*. Snyder exclaimed, "Your constitution is gone! Your constitution is gone!" The wrecking of the entire work of the convention was narrowly averted. But the vote to engross had not been taken. By dint of exceeding activity, the defeated party succeeded in securing a second reconsideration on the following day. A number of delegates had apparently not understood all the bearings of their affirmative votes. Lippitt went from a sick bed under laudanum and spoke against the motion to engross, which was finally lost; and Jones' proposition fixing the present boundary was adopted by an overwhelming majority. Thus was settled the most vexed and exciting question of the convention.

The arduous labors were past, the constitution was completed. It was Saturday, October 13, 1849, and the closing events were highly dramatic. With the dawning of that day of beauty and sunshine there dawned a new era for California. A most affecting part of the day's proceedings occurred after the convention had adjourned *sine die*. The delegates repaired to Governor Riley's residence in a body, where, after a cordial greeting, that pioneer among pioneers, Captain Sutter, warmly expressed to the Governor the thanks of the convention for his aid and co-operation. General Riley was deeply affected; his reply was "a simple, fervent, and eloquent recital of a patriotic desire for the good of California." "At the conclusion of General Riley's remarks," continues an interesting contemporaneous account, "three cheers were given for the 'Governor of California,' three for Captain John A. Sutter, and three more for the new State; and then, after partaking of the refreshments provided by the hospitality of the Governor, the company separated to make their final preparations for departure to their respective homes."

The salient features of the constitution of 1849 are well known. It was advanced in character, liberal, and thoroughly democratic. The achievement illustrates the great capacity of the American people for self-government under the most trying conditions. The document embodied the principles of modern political and jurisprudential philosophers and received the highest commendations from all sources as the "embodiment of the American mind, throwing its convictions, impulses, and aspirations into a tangible, permanent shape." Contrary to the expectation of some of its framers, it endured for thirty years as the fundamental law of the Empire State of the Pacific. All honor then to those earnest, loyal pioneers whose devotion led them to forsake the possibility of sudden fortune for the more enduring, more noble work of building a great commonwealth.

California's constitution was quickly carried to every town and camp and rancho. Candidates for office took the field, political speeches began to be heard in the land, and with alacrity events took on the aspect of an ordinary campaign. A stormy election day, November 13, was responsible for the light vote, but as Governor Riley had anticipated, the constitution was ratified by a vote that was almost unanimous. For the office of Governor Peter H. Burnett received more than double the vote given his leading opponent, and in the contest for Lieutenant Governor John McDougal was successful. Edward Gilbert and George W. Wright were elected Representatives in Congress.

The senators and assemblymen-elect met in San Jose, December 15, on which date the legislature was temporarily organized. On Thursday, December 20, 1849, the State government of California was established, Governor-elect Burnett was inaugurated, and Governor-General Riley issued the following:

PROCLAMATION.

To the People of California.

A new Executive having been elected and installed into office, in accordance with the provisions of the Constitution of the State, the undersigned hereby resigns his powers as Governor of California. In thus dissolving his official connection with the people of this country, he would tender to them his heartfelt thanks for their many kind attentions, and for the uniform support which they have given to the measures of his administration. The principal object of all his wishes is now accomplished—the people have a government of their own choice, and one which, under the favor of divine Providence, will secure their own prosperity and happiness, and the permanent welfare of the new State.

Given at San Jose, California, this 20th day of December, A. D. 1849.

B. RILEY,
Brevet Brig. Gen., U. S. A., and Governor of California.

By the Governor: W. H. Halleck,
Brevet Captain and Secretary of State.

Whatever legal objections might be raised to putting into operation a *State* government previous to the approval of Congress, General Riley judged that, "these objections must yield to the obvious necessities of the case; for the powers of the existing government are too limited, and its organization too imperfect, to provide for the wants of a country so peculiarly situated, and of a population which is augmenting with such unprecedented rapidity." California was a State, but had not gained admission to the Union. Our delegation to the Federal government, including Fremont and Gwin, who had been duly elected to the United States Senate, and Representatives Gilbert and Wright, set out in January, 1850, for Washington, and in March they laid before the two houses certified copies of the new constitution, together with their credentials, and in a long memorial requested "in the name of the people of California, the admission of the State of California into the American Union."

Meanwhile the question of the admission of California had become a topic of absorbing interest in Congress. Southern statesmen were almost beside themselves at the imminent prospect of losing the richest country of the Mexican cession. The question, in itself of the gravest difficulty, was greatly complicated by other issues, and the passions that were aroused seemed leading to certain and ominous conflict, when Henry Clay determined to effect a compromise. The result is known to the world. It is unnecessary to review the details of that memorable struggle over the Omnibus Bill; let it suffice to say that although Congress had repeatedly disappointed the people of California and had caused long and vexatious delay, no sound argument based on facts could now be adduced against the admission. The stern logic of facts was plainly against the South, even though the Compromise of 1850 was a seeming victory for the slave power. The exclusion of slavery from California was a rebuke at once extremely irritating and fraught with perilous import. It is reported how that Calhoun invited Gwin to an interview, in the course of which the dying Senator and champion of the South, "in solemn words predicted, as an effect of the admission [of California] the

destruction of the equilibrium between the North and South, a more intense agitation of the slavery question, a civil war, and the destruction of the South."

Nevertheless, the debates that had been protracted many months, coming at last to an end, the California bill was finally passed in the house, September 7, by a vote of one hundred and fifty to fifty-six, and two days later the act received the approval of the President. If, then, the 20th of December, 1849, is the birthday of the State of California, September 9, 1850, must forever be memorable as the day on which the lusty infant was adopted, not without protest, into the great unity of the sisterhood of commonwealths, the United States of America.

"O California, prodigal of gold,
Rich in the Treasures of a wealth untold,
Not in thy bosom's secret store alone
Is all the wonder of thy greatness shown.
Within thy confines happily combined,
The wealth of nature and the might of mind,
A wisdom eminent, a virtue sage,
Give loftier spirit to a sordid age."

——*ROCKWELL D. HUNT, Ph. D.,*
Professor of History and Political Science,
University of the Pacific.

San Jose, Cal.

ADOPTION OF THE COMMON LAW

BY THE EDITOR

ADOPTION *of the* COMMON LAW

In his first message to the legislature at the first session, December 21, 1849, Gov. Peter H. Burnett, who was a lawyer from Tennessee, after declaring that he had given the subject his most careful attention, recommended the adoption of the following codes:

1. The definition of crimes and misdemeanors as known to the Common Law of England.
2. The English Law of Evidence.
3. The English Commercial Law.
4. The Civil Code of Louisiana.
5. The Louisiana Code of Practice.

He took occasion to say:

> These codes, it is thought, would combine the best features of both the civil and the common law, and at the same time omit the most objectionable portions of each. The civil code of Louisiana was compiled by the most able of American jurists—contains the most extensive and valuable references to authorities—has undergone no material changes for the last twenty years—and for its simplicity, brevity, beauty, accuracy, and equity, is perhaps unequalled.
>
> Its provisions almost entirely relate to general subjects, not local, and would be quite applicable to the condition and circumstances of the State. The civil law, the basis of the Louisiana civil code, aside from its mere political maxims, and so far only as it assumes to regulate the intercourse of men with each other, is a system of the most refined, enlarged, and enlightened principles of equity and justice. So great a portion of the cases that will arise in our courts, for some years to come, must be decided by the principles of the civil law, that the study of its leading features will be forced upon our judges and members of the bar. The civil code of Louisiana being a mere condensation of the most valuable portions of the civil law, would greatly lessen the labors of our jurists and practitioners; and from the simplicity and yet comprehensive nature of its provisions, a general knowledge of the leading principles of the law might the more readily be diffused among the people. A sufficient number of copies of both the civil code and the code of practice could be procured in New Orleans at a much less cost than they could be published here.

On the first of February following, Senator David F. Douglass, of Stockton, who was to be some years later Know Nothing secretary of State, presented in the senate the petition of certain members of the San Francisco bar, praying that the legislature "retain, in its substantial elements, the system of the civil law, as proposed by His Excellency the Governor, in preference to the English Common Law."

The petition was headed by John W. Dwinelle, who was a studious man, destined to win considerable reputation in law and literature. He was from New York, and then aged 32 years. The petition was read, ordered to be printed, and referred to the committee on the judiciary.

Horace Hawes, also a lawyer from New York, in his inaugural address, as prefect of the district of San Francisco, delivered before the ayuntamiento, or town council, in September, 1849, had observed that "the laws now in force in this country, when well understood, may not be found so inadequate to the purposes of good government as has generally been supposed. It is, perhaps, the abuses and maladministration which may have existed under the former government, rather than any defect in the laws themselves, which have brought them into disrepute."

The civil law, already intrenched on the field of action, and thus powerfully recruited, seemed to have as secure a tenure here as in Louisiana.

A week prior to the coming of this petition into the senate, Hon. J. C. Brackett of Sonoma, introduced into the assembly the following resolution:

> That the committee on the judiciary be and they are hereby instructed to report to this house a brief and comprehensive act, substantially enacting that the common law of England, and all statutes and acts of parliament down to a certain reign, or to some year of a certain reign, which are of a general nature, not local to that kingdom, excluding, if advisable, any named statute or any particular portion of any named statute; which common law and statutes are not repugnant to or inconsistent with the constitution of the United States, the constitution of this State, and statute laws that now are or hereafter may be enacted, shall henceforth be the rule of action and decision in the State of California.

On motion of the author, the resolution was laid on the table for future consideration.

In the senate, on February 27th, the judiciary committee submitted its report on the so-called San Francisco petition. The committee was of one mind. It was composed of Elisha O. Crosby of Sacramento, Nathaniel Bennett of San Francisco, and T. A. Vermeule of Stockton. The report was signed by the first-named only, as chairman, and it came to be regarded generally as his composition. Many have declared that Judge Bennett was the author, however. A mystery really attached to this question. The editor, about 1878, had a dispute with Geo. W. Tyler about the authorship of this historic paper, Tyler asserting that Judge Crosby had told him that he (Crosby) was the author. Afterwards, Judge Tyler informed the editor that he had seen Judge Crosby again, and that the latter had disclaimed the authorship, and credited the same to Judge Bennett.

Many years after this, in 1894, we requested Judge Crosby to give us some notes of his life, and we received from him in his own hand, and have preserved, among other statements, the following: "I was the author of the report and bill adopting the common law, the bill organizing the Supreme and District Courts, etc., etc."

But as to *the bill*, the printed journal credits the authorship as we give it hereinafter. The *report* was probably the joint product of Judge Crosby and Judge Bennett.

Elisha Oscar Crosby was born in Tomkins county, New York (as he told us, in 1894) when, in his old age, he was holding the office of justice of the peace in Alameda. He was born in 1818. He was admitted to the bar of the New York Supreme Court July 14, 1843. Coming to California in 1849 he was admitted to the bar by the Supreme Court here on July 19, 1851. He was admitted to the bar of the United States Supreme Court at Washington, on December 6, 1865. He was a member of our first constitutional convention, 1849; prefect of the Sacramento district in the same year; and a State senator at the first and second sessions of the legislature. From 1852 to 1860, he practiced law in San Francisco. President Lincoln appointed him minister to Guatemala, and he held the office from March 22, 1861 to 1865. He died in Alameda a few years ago, nearly four score years of age.

This committee report (whoever wrote it) ought, perhaps, to be set forth in full in this History; but we will give the more salient parts as follows:

> The petition, praying, as it does, that the legislature will retain, in its substantial elements, the system of the civil law, distinctly presents the alternative of the adoption of the common, or of the civil law, as the basis of the present and future jurisprudence of this State. A choice between these two different, and in many respects conflicting systems, devolves upon this legislature; and, we think, we do not over-estimate the importance of the subject, in expressing our conviction that this choice is by far the most grave and serious duty which the present legislature will be called upon to perform. It is, in truth, nothing less than laying the foundation of a system of laws, which, if adapted to the wants and wishes of the people, will, in all probability endure through generations to come,—which will control the immense business transactions of a great community,—which will direct and guide millions of human beings in their personal relations,—protect them in the enjoyment of liberty and property,—guard them through life, and dispose of their estates after death. Actuated by these considerations, and impressed with the necessity of mature deliberation and an unbiased decision, your committee have felt it their duty to submit to the indulgence of the senate a more full and detailed report upon the matter referred to them, than they should otherwise have felt themselves justified in doing.

After observing that the committee had ascertained that the San Francisco bar then embraced about one hundred members, and that a largely attended bar meeting had just recommended the common law, whereas the petition in favor of the civil law was signed by only eighteen attorneys, the report proceeded:

> But before entering upon the subject in detail, we would premise that no one for a moment entertains the idea of establishing in California the whole body of either

the common or the civil law. There are in each principles and doctrines, political, civil and criminal, which are repugnant to American feelings, and inconsistent with American institutions. Neither the one nor the other ever has been, or ever can be, unqualifiedly adopted by any one of the United States. Thus, in Louisiana, where the civil law prevails, and in the rest of the States, in which the common law is recognized, great and radical additions, retrenchments, and alterations have been made in the particular system which each has taken as the foundation of its jurisprudence. The Constitution of the United States swept away at once the entire political organization as well of the common as of the civil law. The several State constitutions make still further inroads, not only into the political, but also into the civil and criminal departments of both systems; and the statute law of each State eradicates many harsh doctrines, and abolishes many oppressive and tyrannical provisions, and in their place substitutes positive rules of action, milder and more enlightened in their nature, more applicable to our political organization, and more congenial with the cultivated feelings and liberal institutions of our people. But still the great body of each system remains untouched. Such is the wonderful complexity of human affairs—a complexity which must always increase more and more in proportion to the advance of commerce, of civilization, and of refinement—that of the immense multitude of questions which are brought before your courts for adjudication, but very few arise under, or are dependent upon, or can be controlled by, constitutions or express statutory laws. Examine the reports of the different States, Louisiana amongst the rest, and it will be found that a precise rule has been laid down by statute for scarcely a tithe of the cases which the courts have been called upon to decide; and should the futile attempts be made to provide, in advance, for every contingency which may occur, your volumes of legislation would be increased to a number that, to apply sacred language to a profane subject, "the world would not contain them."

The report next entered into an elaborate statement conveying a general idea of the two great systems of jurisprudence, and then particularly contrasted them as follows:

To commence, then, with the domestic relations. The civil law regards husband and wife, connected it is true by the nuptial tie, yet disunited in person, and with dissevered interests in property. It treats their union in the light of a partnership, no more intimate or confiding than an ordinary partnership in mercantile or commercial business. Whereas the common law deems the unseen bond which unites husband and wife, as so close in its connection, and so indissoluble in its nature, that they become one in person, and for most purposes one in estate. At the same time, it puts the burden of maintenance and protection where it rightfully belongs, and makes the husband, as Providence designed he should be, in truth and reality the head of the household. The concessions which it makes to the wife, in respect to property, by compelling the payment of her debts and vesting her with an estate in dower, are a full compensation for the sacrifices which it requires her to make, and an ample equivalent for the communion of goods allowed her by the civil law. The result is, that in no country has the female sex been more highly respected and better provided for—nowhere has woman enjoyed more perfect legal protection, or been more elevated in society; and nowhere has the nuptial vow been more sacredly observed, or the nuptial tie less often dissevered, than in the common law countries—England and the United States.

The civil law holds the age of majority in males, for most of the ordinary purposes of life, at twenty-five years. Even after this, the son continues in many respects subject to the parental authority until it is dissevered in one of six specified modes. This system retains man in a continued state of pupilage and subordination from earliest infancy, until in some cases his locks become hoary with age. But the common law absolves the age of twenty-one from parental restraint, and clothes it with the complete panoply of manhood. It bids the youth go forth into the world, to act, to strive, to suffer—an equal with his fellow man—to put forth his energies in the service

of his country, or in the eager strife for the acquisition of wealth or the achievement of renown. Hence, under the latter system, the activity, the impetuousity, the talents of early manhood, stimulated by fresh aspirations of ambition, or love of gain, are, at the earliest practicable period, put under requisition and brought into exercise, in developing the resources, and adding to the wealth and glory of a State; whilst, under the former, they stagnate for lack of sufficient inducement to action, and are to a great degree lost.

Whilst the fundamental principles of domestic society thus differ in the two systems, an equal diversity runs throughout all the deductions therefrom; and we are convinced that, in the several relations above noticed, and also in that of guardian and ward, contrasted with tutor or curator and pupil, there are nicer distinctions and a greater multiplicity of rules and qualifications in the civil law than in the common law.

Again, in relation to mercantile transactions: In the civil law the purchaser of property may, within the period of a certain limitation, in some countries, four, and in others, two years, come into court and claim, under the doctrine of lesion, that the goods purchased by him were worth only a part of the price which he paid therefor. Thus A. sells property to B. in a perfectly fair sale, without deceit or false representation. After the expiration of some months, or it may be years, B. brings suit, and alleges that he paid twice the value of the property, and compels A. to make restitution. But the common law in such cases, where no fraud appears, and no false representations are made, leaves each party to act upon his own responsibility, and for his own interest, as his judgment shall dictate. . . . . .

If time and space permitted, and it would not be occupying too much attention of the senate, we might trace the same general principle of distinction through various other departments of the two systems, through their provisions for the tenure and transfer of real estate, for the transmission of inheritances and successions, for the execution and validity of last wills and testaments, and the distribution of property in pursuance of them, and for the enumeration of the powers and duties of executors, administrators, and trustees; but we must pass them by, and hasten to other considerations. . . . . .

We by no means concede the position that the civil law is in full force in this State at the present time. It is extremely uncertain to what extent it ever did prevail. Situated at so great a distance from the Mexican capital, occupying months in the interchange of communications with that central point of law and legislation, connected with it by the fragile tie of common descent, rather than by any intimate communion of interests or sympathy of feeling, exposed to frequent revolutions of the general and departmental governments, finding but little stability in the Mexican congress, little convenience for the promulgation of its laws, and less power to enforce them, the people of California seem to have been governed principally by local customs, which were sometimes in accordance with civil law and sometimes in contravention of it. However this may be, it is very certain that it now prevails to but a limited extent, and equally certain that the common law controls most of the business transactions of the country. The American people found California a wilderness—they have peopled it; they found it without commerce or trade—they have created them; they found it without courts—they have organized them; they found it destitute of officers to enforce laws—they have elected them; they found it in the midst of anarchy—they have bid the warring elements be still, have evoked order out of confusion, and from the chaotic mass have called forth a fair and beautiful creation. Throughout all this they have taken the common law, the only system with which they were acquainted, as their guide. Their bargains have been made in pursuance of it—their contracts, deeds, and wills have been drawn up and executed with its usual formalities—their courts have taken its rules to govern their adjudications—their marriages have been solemnized under it—and, after death, their property has been distributed as it prescribes. Are you to hold all or a great portion of these things as naught? Will you overturn or invalidate the immense business transactions of a great community? And yet to this must you come, if you say that the civil law is in force throughout the State.

> The petitioners ask, in substance, for the adoption of the English definition of crimes, the English law of evidence, the English commercial law, and the civil code of Louisiana. Without doubting that a harmonious and symmetrical system might be deduced from them all, by the long and patient labor of years, of men fully adequate to the task, we must, nevertheless, be allowed to suggest our opinion, that were we to attempt to adopt them, as they are, without more labor devoted to reconciling their jarring provisions than any legislature would have either the will or the time to bestow, we should have a system of laws which would be no system at all—a system of contradictions and absurdities—a rule here conflicting with a rule there—the same principles thrice reiterated, and each time in different terms, and in a new shape.

After a number of other reasons, the committee recommended that the courts should be governed in their adjudications by the English common law, "as received and modified in the United States; in other words, by the AMERICAN COMMON LAW."

The report was accepted, and, on motion of Senator Elcan Heydenfeldt, of San Francisco, brother of the jurist, Solomon Heydenfeldt, it was ordered that 500 copies be printed.

In the assembly a week later, Mr. Brackett, pursuant to notice, and in the spirit of his resolution before quoted, introduced a "Bill Concerning the Common Law," which was a bill adopting that system substantially. On the next day, Edmund Randolph, of San Francisco, a Virginian, moved to refer the bill to a select committee, with instructions to substitute "the English law of evidence, and English commercial law, as understood in the courts of the United States." This was defeated by a vote of ten ayes to sixteen noes, the majority including Mr. Brackett, A. P. Crittenden, and the since distinguished Judge, E. W. McKinstry.

A. P. Crittenden, a Kentuckian, who afterwards held for a long period a place in the front rank of the State bar, and who was killed by Mrs. Laura Fair on the Oakland ferry boat, November 3, 1870, then moved to refer the bill to a select committee, with instructions to substitute the following ever-memorable words:

"The Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States or the Constitution or laws of the State of California, shall be the rule of decision in all the courts of this State."

This was agreed to. On the same day Mr. Crittenden as chairman of the appointed committee, reported the substitute above, and it was adopted by a vote of seventeen to six, Mr. Randolph being among the noes.

It was ordered, without dissent, that the title of the bill be changed from "Concerning the Common Law," to "Adopting the Common Law."

In the senate, April 12, Hon. W. D. Fair, Whig senator from San Joaquin, husband of Laura Fair before named, from the judiciary committee, to whom had been referred the assembly bill, now entitled "An Act Adopting the Common Law," reported the same without amendment, and the bill was passed at once, the rules having been suspended for that purpose. There was no

opposition and the roll was not called. The bill became a law, by the signature of the Governor, on the 12th of April, 1850.

The words of this act were incorporated into the political code of the State, comprising section 4468 thereof, but it is provided in all of the codes, which took effect on January 1, 1873, (section 4 of each code) as follows:

"The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this State respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice."

——*THE EDITOR.*

THE TREATY OF GUADALUPE HIDALGO *and* PRIVATE LAND CLAIMS

HON. JOHN CURREY

John Currey

TREATY of GUADALUPE HIDALGO and PRIVATE LAND CLAIMS

At the date of the treaty between Mexico and the United States, known as the Treaty of Guadalupe Hidalgo, California was sparsely settled by a people who were mainly Mexican citizens, and who for the most part were engaged in pastoral occupations.

The treaty was ratified and exchanged in May, 1848, and on the 4th of July in that year was made public by the proclamation of President Polk, in which he declared that he "caused the said treaty to be made public to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof."

By this treaty Mexico ceded to the United States the territories of Alta California and New Mexico and the country lying north of the Gila river. The Treaty contained stipulations providing for the protection and security of the inhabitants of the ceded territories, in the free enjoyment of their liberty, property and religion. Though stipulations of the character here mentioned were not absolutely essential for the purposes declared, they were such as are usual, and, it may be said, always required by the nation ceding territory, and readily accepted by the nation acquiring the same. "It is the usage of all nations of the world," said the Court in the Arredondo case (6 Peters, 712), "when territory is ceded, to stipulate for the property of its inhabitants. An article to secure this object so deservedly held sacred in the view of policy as well as of justice and humanity, is always required and never refused."

Stipulations of this kind render certain the obligations of the new government to the people transferred to a new sovereignty, who are able to better understand an express promise than an obligation which is imposed by the law of nations of which they are generally ignorant; and besides this, the inhabitants of the ceded territory, being promised protection in the treaty itself, are thereby inspired with confidence in and loyalty to the government of which they necessarily become a constituent portion.

Vattel says, "Every treaty must be interpreted as the parties understood it when the act was proposed and accepted."

The Treaty of Guadalupe Hidalgo, by its eighth and ninth articles, provided for making such of the inhabitants of the territories as might so elect, citizens of the United States, and also for their protection, and further for the protection of those Mexicans residing in the territories, who might elect to remain citizens of the Mexican Republic, in the free enjoyment of their liberty, property and religion, without restriction. These stipulations were in effect as ample and comprehensive as the stipulations of the Third Article in the treaty between France and the United States, by which the latter government acquired the Lonisiana Territory in 1803; and in substance as full as provided in the treaty by which Spain ceded to the United States the territories of the two Floridas in 1819.

As early as 1824 the Mexican Republic enacted a law providing for the granting of lands in her territories to her citizens who would accept and ocrupy them. This law was supplemented by a system of regulations adopted in 1828, to facilitate the granting of lands, not to exceed a specified amount to any one person. The law of 1824 and the regulations of 1828 provided a mode or system consisting of successive proceedings and steps, by which grants of land could be made. In a few instances all the steps of the proceedings, essential to the complete transfer of the title in full property, were performed and fulfilled, so that in these cases the particular grantee became the owner by perfect title—title in fee simple absolute—of the land described and covered by his perfected title. But the great majority of land claims, grants or titles, as they were indifferently denominated, were imperfect and inchoate claims, grants or titles; and they were in this condition for the most part, when California was ceded to the United States.

From this statement it will be observed that at the date of the treaty, there were two classes of land claims in California, both derived from the former government; one of which consisted of perfect titles—titles in fee simple absolute—by which the holders thereof were seized, as owners in full property of the lands granted; the other class consisted of equitable claims to lands, the title to which had not been fully consummated. They were denominated incipient, inchoate, or imperfect grants or titles.

It will be noticed that holders of the last kind of claims were not the owners of the lands claimed, for complete titles thereto had not passed to them from the Mexican government. To such lands the Mexican government held the legal title, when the cession of California was made to the United States, in full property, sovereignty and dominion. "By accepting the cession, the United States put itself in the place of the former sovereignty and became invested with all its rights, subject to all its concomitant obligations to the inhabitants. Both were regulated by the law of nations, according to which the rights of property are protected, even in the case of a conquered country,

and held sacred and inviolable, when it is ceded by treaty with or without any stipulation to such effect." So said the court in Strother against Lucas (12 Peters, 435).

The passage here quoted was repeated and applied to the California case of Teschmacher against Thompson (18 Cal. 23-24) by Mr. Chief Justice Field, who held that in respect to land claims which were of an equitable nature, but as yet unperfected, it was the conceded duty of the United States to provide the mode and means for their confirmation and location, and to grant legal titles therefor to the persons entitled in equity to such lands. He said, "By the law of nations those rights, in the language of our Supreme Court, were 'sacred and inviolable,' and the obligation passed to the new government to protect and maintain them. The obligation was political in its character, binding on the conscience of the new government, and to be executed by proper legislative action, when the requisite protection could not be afforded by the ordinary course of judicial proceedings in the established tribunals or by existing legislation."

Here the learned Chief Justice distinguished between the legislative and judicial authority as to the subjects of their respective jurisdictions. The legislative authority purely political, was to be exercised and executed by appropriate legislation for the *requisite protection of property when such protection could not be afforded in the ordinary course of judicial proceedings in the established tribunals of the country.* Perfected titles are *the titles* which can be afforded "the requisite protection" in the ordinary course of judicial proceedings. Not so in respect to titles of an incipient, inchoate and unperfected character. These are within the jurisdiction of the political department of the government.

The obligations of our government to the people of the ceded territories, in respect to their land claims, and which was to be performed and fulfilled by the *political* department of the government by appropriate legislation, was in the very nature of the subject, limited to the class of claims which needed the aid of the government to render them perfect titles. A title already perfect needed no such aid. It was not in the power of Congress to make titles already perfect better titles; nor was it within the constitutional power of Congress to impair or destroy perfect titles.

It is quite manifest that at the time of the passage of the Act of Congress of March, 1851, entitled, "An Act to ascertain and settle the private land claims in the State of California," it was the general belief in Congress that all land claims in California, derived from the Spanish and Mexican governments, were inchoate and imperfect, mere equitable claims, which our government, by treaty stipulations and the law of nations, was bound to protect. It is reasonable to suppose that Congress, in this belief, passed the Act of March, 1851.

The jurisdiction of Congress in the premises is found in Section 3 of Article IV of the Constitution, in these words: "The Congress shall have

power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." It is admitted that Congress had power to make all laws necessary and proper for carrying into execution this power, which appears to be, to make disposition of, and to make needful rules and regulations respecting the property of the territories and other property belonging to the United States. This provision relates solely to the subject matter of public property. It, in no sense, affects private property, nor is there found in the Constitution any provision which gives to Congress power to dispose of the property of private persons, either directly or indirectly, by the enactment of a law for the purpose, or which shall have such effect by any means whatever, except by process of condemnation for public use with just compensation therefor.

The Act of 1851 provided for the creation of a board of commissioners for the purpose declared in the act. The commissioners were authorized to receive petitions for the confirmation of private land claims and to hear and examine documentary evidence and the testimony of witnesses and to decide as to the validity or invalidity of such claims. The eighth section of the act provided that "Each and every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to said commissioners when sitting as a board, etc.;" and by the thirteenth section of the same act, Congress pronounced judgment against all who should fail to present their claims to the commissioners as required, in the following words: "All lands, the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held and considered a part of the public domain of the United States."

The words of the eighth section, viz., "Any right, or title," and the words of the thirteenth section, "All lands, the claims to which shall not have been presented," are sufficiently comprehensive to include all claims, perfect and imperfect, as to title; and if Congress had the power under the Constitution and under the treaty, of equal force and dignity with the Constitution itself, to require as provided in the eighth section, and to declare the penalty, as provided in the thirteenth section, there could be no doubt as to the disastrous consequences to the holders of perfected titles to lands derived from the former government, who had declined the submission of their claims to the jurisdiction of the commissioners.

It should be remembered that the Treaty of Guadalupe Hidalgo became, at the time of its ratification and exchange, an integral part of the supreme law of the land, binding upon each and every department of the government, which the political branch of the government could not and cannot alter or abrogate, either directly or indirectly, either by expression or implication, so as to disturb or destroy vested rights of property secured by it, or brought into existence under or in pursuance of it.

Notwithstanding the stipulations of the treaty and the Constitution, which declares that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation, and other provisions of the organic law affecting the subject, the Supreme Court, in the case of Boteller et al. against Dominguez, decided the eighth and thirteenth sections of the Act of 1851 to be constitutional in their application to perfect titles, to the same exent as to titles or grants of an inchoate and imperfect character.

It is respectfully submitted that this decision is not supported, either upon principle or by authority.

An act of the legislature is not due process of law. This has been so held in many decisions of the courts and by elementary writers on the subject. "Law of the land, due process of law," said Chancellor Kent, "means law in its regular course of administration through courts of justice." Another great judge (Chief Justice Ruffin, of North Carolina) said, "The law of the land does not mean merely an act of the legislature, for that construction would abrogate all restrictions on legislative authority. The clause means that statutes, which would deprive a citizen of the rights of person or property, without a regular trial according to the course and usage of the common law, would not be a law of the land in the sense of the Constitution."

Such being the law, how is it that Dominguez could be held, through the operation of the Act of 1851, to have lost his lands which he possessed under a perfect title derived from Mexico? The title of Dominguez, as it appeared before the court, was *a perfect title*, and so the court conceded it to have been at the date of the treaty of cession, and so in effect held it to be, until he lost it, by failing to submit it to the jurisdiction and judgment of the commissioners.

The Supreme Court, during the period when Marshall was its Chief Justice and for some years afterwards, had, at various times, occasion to deal with questions of private rights of property of the inhabitants of the ceded territories of Louisiana and Florida, existing at the respective dates of these cessions. The most of such property rights were of an imperfect and inchoate nature, but there were instances calling for the expression of opinions in relation to rights of property which had become perfected, in all of which the court, in effect, declared them to be beyond the power of Congress to impair or destroy.

In Strother against Lucas, the court, in speaking of the stipulation of the Louisiana treaty for the protection of the people of the ceded country, said, "Without it the titles of the inhabitants would remain as valid under the new government as under the old; and these titles, at least so far as they are consummate, might be asserted in the courts of the United States independent of the treaty stipulation." In the case of Clark (8 Peters, 445), Mr. Chief Justice Marshall, in speaking of the appointment of boards of commissioners to ascertain the validity and location of grants of lands in Florida, said, "For this purpose boards of commissioners were appointed with extensive powers,

and great progress was made in the adjustment of claims. *But neither the law of nations nor the faith of the United States would justify the legislature in authorising these boards to annul pre-existing titles, which consequently might be asserted in the ordinary courts of the country against any grantee of the American government.*" And in the case of Wiggins (14 Peters, 350), the court said that "The perfect titles made by Spain before the 24th of January, 1818, within the territory, are intrinsically valid and exempt from the provisions of the eighth article, is the established doctrine of this court and they need no sanction from the legislative and judicial departments of the country."

In Maguire against Tyler (8 Wallace, 650), the court said, "Complete titles to lands in the territories ceded by France to the United States, under the treaty concluded at Paris on the thirteenth day of April, 1803, needed no legislative confirmation, *as they were fully protected by the third article of the treaty of cession.*"

The eighth and ninth articles of the Treaty of Guadalupe Hidalgo, as finally ratified and exchanged, mean the same as the third article of the Louisiana treaty, as represented and explained by the commissioners of the United States to the Mexican minister of foreign affairs at the city of Queretaro, on the 26th day of May, 1848. This appears by a protocol, signed by such commissioners and the Mexican minister on that day.

It is believed there are no decisions of the Supreme Court holding a different doctrine on the subject under consideration, from those already cited, except some of an *obiter dicta* character in relation to the construction of the Act of 1851, until the decision of the case of Dominguez.

The Supreme Court of California always regarded the private land claims existing in the territories ceded, at the date of the treaty of Guadalupe Hidalgo, as standing on the same ground as those of like character derived under the Louisiana and Florida treaties, and that by the Treaty of Guadalupe Hidalgo such private land claims were as fully guaranteed protection as like claims were guaranteed protection under the Louisiana and Florida treaties, and that the decisions of the Supreme Court of the United States in those cases were applicable to the California cases. Perfected titles, it was believed by the California courts, upon principle and authority, needed no aid from Congress to make them what they already were, but that the holders of such titles and the owners of the lands covered by them, were competent to assert their rights in the established courts of the country, as might be necessary, against all intruders and even against any adverse action of the United States and its grantees.

In Estrada vs. Murphy (19 Cal., 269), Mr. Chief Justice Field suggested that doubts might exist as to the validity of the legislation of Congress, so far as it required the presentation to the board of land commissioners of claims when the lands were held by perfect titles acquired under the former govern-

ment. In Gregory vs. McPherson (13 Cal., 571), the court, in alluding to a perfected title, held that no forfeiture accrued of such a title by a failure to present it to the board of commissioners.

The Supreme Court of the United States in Beard vs. Federy (3 Wallace 490), per Field, justice, said, "By the Act of March 3, 1851, the government has declared the conditions under which it will discharge its political obligations to Mexican grantees. It has there required all claims to land to be presented within two years from its date, and declared in effect that if, upon such presentation they are found by the tribunal created for their consideration, and by the courts on appeal to be valid, it will recognize and confirm them, and take such action as will result in rendering them perfect titles. But it has also declared in effect, by the same act, that if the claims be not thus presented within the period designated, it will not recognize nor confirm them, nor take any action for their protection, but that the claims will be considered and treated as abandoned." And then the court further said, *"It is not necessary to express any opinion of the validity of this legislation in respect to perfect titles acquired under the former government.* Such legislation is not subject to any constitutional objection *so far as it applies to grants of an imperfect character, which require further action of the political department to render them perfect."*

It thus appears that the court was not ready in 1865 to hold the Act of Congress constitutionally valid in so far as perfect titles could be deemed to be affected by it.

In Waterman vs. Smith (13 Cal., 419-420), the same learned Justice had occasion to interpret and construe the 15th section of the Act of 1851. The question in that case arose as to the effect of a final confirmation and a patent issued thereon, and the interests of third persons claiming the land in controversy under an inchoate and imperfect grant which had been confirmed, but for which no patent had been granted. The section here mentioned provides, "that the final decisions rendered by said commissioners or by the District or Supreme Court of the United States, or any patent to be issued thereon under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons." In disposing of the question the court said, "The patent is conclusive evidence of the right of the patentee to the land described therein, not only as between himself and the United States, but as between himself and a third person, who has not a superior title from a source of paramount proprietorship." And the court further said, "The third persons against whose interests, by the 15th section of the Act of 1851, the final confirmation and patent are not conclusive, are those whose titles at the time are such as to enable them to resist successfully any action of the government in respect to it." This decision was followed by a number of others subsequently rendered by the same eminent jurist, while chief justice of that court, in equally cogent language.

The decisions of the same court, which were made after the time of Mr. Justice Field, are in accord with the decisions of the State court referred to, and also upon principle in accord with the decisions of the United States in like cases.

It will be noticed that the doctrine declared in Waterman against Smith, is the same as in Clark's case in 8th Peters, where the Chief Justice spoke of titles which could *"be asserted in the ordinary courts of the country against any grantee of the American Government."*

Recognizing the correctness of the construction given the 15th section of the Act of 1851, in Waterman vs. Smith and Teschmacher vs. Thompson, the Supreme Court of the United States, in Beard vs. Federy (3 Wall, 493), said, "The term, 'third person,' as there used, does not embrace all persons other than the United States and the claimants, but only those who hold superior titles, such as will enable them to resist successfully any action of the government in disposing of the property."

The Supreme Court of California was called upon to meet the question directly, for the first time in Minturn vs. Brower (24 Cal., 645), and there held the legislation of Congress to be ineffectual to impair or destroy perfect titles for failure to present them to the commissioners for their examination and judgment thereon. This decision was followed through a period of nearly twenty-five years, when in December, 1887, the Court in a full and carefully considered opinion, in Phelan vs. Poyorena (74 Cal., 448), reviewed the whole subject, reaching the same conclusion as in Minturn vs. Brower; and then came before the court at the same term the case of Dominguez, which was decided, as were the two cases last mentioned. These decisions were the logical sequence of the doctrines declared in many cases which came before the Supreme Court of the United States in respect to grants existing in Louisiana and Florida, at the respective dates of the treaties ceding those countries to the United States, and also necessarily resulting from the interpretation of the 15th section of the Act of 1851, as found in Waterman vs. Smith and other California cases, and in Beard vs. Federy (3 Wallace, 491), and also resulting from the provisions of the Constitution which limit Congress to the disposition of government property, and which further declares that no person shall be deprived of liberty or property without due process of law, and that private property shall not be taken for public use without just compensation.

If there be titles derived from a source of paramount proprietorship, which can be interposed in successful resistance to any action of the government or its grantees, what are they in their nature and quality, unless they be perfect titles? Is a title in fee simple absolute, in common law phrase, a better title than a perfect title under the laws of Mexico, when that government was the absolute sovereign proprietor of the lands granted? There can be but one answer to this question.

The title of Dominguez to the tract of land Las Virgenes was a perfect title at the date of the cession, as appeared by the record before the court in the action, and so the court, by Mr. Justice Miller, admitted it to be at that date, but gave force and effect to the legislative judgment and decree, declaring that the same became a part of the public domain, because its owner failed to submit his title thereto to the commissioners for their examination and judgment respecting it. Is not this, in effect, a confiscation of the property of Dominguez, depriving him of it without due process of law, taking it from him for the use of the government, without rendering for it a just compensation?

Involved in the decision of the court, holding that a perfect title must needs be presented to the commissioners to save it from forfeiture to the government, is an admission that such was a perfect title in fee simple absolute at the date of the cession, and at the time of the passage of the Act of 1851, and continued to be so until the end of the period prescribed for its presentation to the commissioners. The examination and judgment of the commissioners could not make the title a better title than it had been and was, for that was impossible. What could they have done more than to inspect and examine the muniments of the title, which were of record, importing absolute verity? If they had proceeded farther and decreed it to be a perfect title, such decree would have been idle and inconsequential. Nothing could come of such decree to alter, change, or give greater validity to the title, than it had at the beginning of the proceeding. Nothing could be gained from a patent of the United States. Such patent could not make the title better than it had been, and was from the time it became complete and perfect under the laws of Mexico. The patent record was no better as a record than the one already existing in the archives of the government, easily accessible to all concerned. No beneficial end could possibly be attained by the presentation of such a title to the commissioners, and their confirmation of it followed by a government patent, for the reason that the owner of such a title had already a perfect title to the land, which was duly recorded.

Between parties litigating as to which has the right to the possession of certain real property, depending upon a legal title from a source of paramount proprietorship, the party holding such title must prevail. In such a case there is a tangible result as distinguished from a result purely ideal.

If it be said the Act of 1851 contemplated and provided for a contest and litigation between the owner of land by legal title in full property, and the United States, as to which party should have and hold the land in controversy, the question arises as to the power of the United States, one of the parties, in its political capacity to create a special tribunal with authority to hear and try, upon documentary evidence, and the testimony of witnesses, and to determine by decree as to the rights of the respective litigants to the land in controversy, by a proceeding, not in due course of law, but entirely independent of

the right of a trial by a jury, a right secured by the Constitution, which provides that "in all suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved." Such an action or suit is exclusively of common law cognizance, as distinguished from the jurisdiction of courts of equity, and the jurisdiction conferred on the commissioners by the Act of 1851, in regard to lands claimed by private persons by virtue of any right or title of an inchoate, imperfect, or equitable nature, derived from the Spanish or Mexican government.

It is believed that no one can or will say the scheme devised by Congress for the trial of perfected titles *in rem*, was, in any just sense, a trial of such title, in accordance with the "law of the land—due course of law—due process of law."

The decision in the Dominguez case is placed on two grounds. The first ground is that of governmental policy respecting the public lands. The learned Justice says: "It is clear that the main purpose of the statute was to separate and distinguish the lands which the United States owned as property * * * from the lands which belonged, either equitably or legally, to private parties, under a claim of right derived from the Spanish or Mexican governments." And he further says, "This was the purpose of the statute; and it was equally important to the object which the United States had in the passage of it, that claims under perfect grants, under the Mexican government, should be established as that imperfect claims should be established or rejected." To support this view of the purpose of the statute, several expressions of opinion by justices of the court are cited, two of which, the most emphatic, may be here noticed. The first is the case of United States vs. Fossat (21 Howard, 447), and the second, the case of Moore vs. Steinbach, (127, U. S. R., 81).

The Fossat case involved the consideration of an inchoate grant or imperfect title, which the claimant had presented to the commissioners, and Mr. Justice Campbell, who prepared the opinion in the case, discoursed at some length as to the necessity existing for the presentation of all land claims held under perfect titles as well as those held under imperfect grants, to the board of commissioners for their examination and judgment, saying, "The effect of the inquiry and decisions of these tribunals upon the matter submitted is final and conclusive. If unfavorable to the claimant, the land shall be deemed, held and considered a part of the public domain of the United States"; and continuing the learned Justice said, "All claims to lands withheld from the board of commissioners during the legal term for presentation, are treated as non-existent, and the land as belonging to the public domain."

In Moore vs. Steinbach, Mr. Justice Field said the defendants had not acquired a perfect title to the lands which they claimed. He then proceeded to consider the obligation which the owner of land by perfect title in full property, was under, to present his claim to the board of land commissioners

for examination, and continuing, he said, "The ascertainment of existing claims was a matter of vital importance to the government, in the execution of its policy, respecting the public lands, and Congress might well declare that a failure to present a claim should be deemed an abandonment of it, and that the lands covered by it should be considered a part of the public domain."

These expressions of opinion are entitled to respectful consideration as emanating from able and learned lawyers; but they can hardly be esteemed judicial determinations as to the necessity of presenting a perfect title for the examination and judgment of the commissioners, for the reason that that question was not involved in, or necessary to, the decision of the cases named, as each of the parties in those actions had presented his claim to the lands in question to the board of commissioners.

Mr. Justice Campbell held that all claims to land withheld from the board "are treated as non-existent and the land as belonging to the public domain."

Treating a perfect title as *"non-existent"* must be deemed an attempted violation of a vested right. The fact of the existence of a title in fee simple to land cannot be destroyed by a sweep of the pen, nor by the *obiter dictum* of a learned judge. It would be well to remember that a fact cannot be destroyed.

Mr. Justice Field held in the Moore case that a failure to present a claim to lands, subsisting in a perfect title, might well be declared by Congress an abandonment of the claim, and that the lands covered by the title should be considered a part of the public domain. Would not such a declaration and such a determination be of the nature of a judgment, emanating from the political branch of the government, in effect condemning the land of the owner to government use, without due process of law, and without paying him for it? How could the legislature declare and decree that the owner of land in full property should be deemed to have abandoned it, when he was in the actual and exclusive seizin and possession of it, and when it further appears that he had been in such actual seizin and possession ever since it was granted to him by the Mexican government?

It is true the government, in the execution of its policy, looking to the separation of its own lands from those belonging to private persons, might adopt to that end such means as Congress might deem proper, provided the means were within its constitutional authority. But as already observed, the taking from the owner in fee simple his property for the accomplishment of this policy, without paying him for it, is unconstitutional.

There exists a lawful means, a judicial proceeding, by which the end in view can be attained. If to attain such end it may be for the general welfare to take from the owner his land, let the government condemn it in a lawful way, paying for it a just compensation. This was the doctrine laid down by Mr. Justice Miller himself in the case of the Fertilizing Company vs. Hyde Park, (97 U. S. R., 659).

The Constitution makes it the duty of the courts of the country to prevent the violation of constitutional rights of property by the other departments of the government, by refusing to enforce laws which provide for the violation of such rights. This duty has been exercised time and again, as the demands of justice have required.

If the main purpose of the Act of Congress was to separate and distinguish the lands of the government from the lands of private owners, there could not exist any necessity for the accomplishment of such purpose in respect to lands held under perfect titles, because such lands are already separated and distinguished from the government domain. Lands held under such titles are well and exactly bounded and described by proper muniments of title, as much so as they could be by government survey or by stone walls standing upon and marking their boundaries.

The exigencies of war and circumstances of extreme danger to life, arising from prevailing pestilences and famines, and the danger to life and property from destructive conflagrations and floods, and the like, may justify a resort to extreme measures for the safety and welfare of the people concerned. Such measures may result in the taking or destroying of private property without rendering for it immediate compensation, but it is maintained with confidence as a general truth that nothing short of extreme and urgent necessities, would justify the government in the execution of a policy of the kind mentioned in the Moore case, in the taking of the property of an individual for public use or for government use, without paying for it a just price. A policy so carried into execution strikes at and uproots the very foundation of property rights, rendering the man of wealth today a pauper tomorrow.

Is there any one who believes that if all private land claims in California had been held under perfected titles at the date of the cession, the Act of 1851 would have been passed? Would there in such case have existed any reason or necessity for a commission to ascertain the location, boundaries and extent of such private lands, in order to enable the government to distinguish and know the extent and limits of its own lands? It is reasonable to suppose that, had all land claims subsisted in perfect titles, Congress would have concluded there was no necessity for such an act as that of March, 1851, and further, that it, as the political department of the government, would have decided that it had no jurisdiction in the premises.

In the Louisiana and Florida cases of private land claims, as also in California, as to like class of claims of an inchoate and imperfect character, there existed a necessity for their ascertainment, settlement and location. This was especially so in California, for the grants of the character here mentioned were of tracts of specified quantity within areas of undefined and generally of much larger extent, and the equitable grantee was not able to say, with any degree of exactness, where were the boundaries of his land; and hence there existed a necessity for government action, not only to give him a title in fee

simple to his land, but to give it a location by proper metes and bounds, which would separate and distinguish it from the public domain. The reason for the rule and policy of the government, in respect to inchoate and imperfect grants of land of uncertain and undefined extent and boundaries, cannot be said to apply to lands held under perfect titles, with boundaries fixed and known, as they must be, in the case of lands covered by perfect titles.

It is a maxim of the law that when the reason for a rule of law ceases, the law itself must cease. In the case of a perfect title there is no reason for the application and enforcement of the policy relied on for the justification of the requirement to present to the commissioners claims to lands subsisting in perfect titles, for reasons already stated.

Besides the foregoing answer to the policy assumed to be essential to the government, to enable it to discover where are its own lands, it is submitted that Congress had no right or authority, as the political department of the government, to interfere in any manner with vested rights of property, which did not stand in need of its aid.

If Congress has such power, whence is it derived? Certainly not from the grant of power found in Section 3 of Article IV of the Constitution. The grant of power in that article is to dispose of the public domain and other property of the United States, and that only.

The second ground for holding the eighth and thirteenth sections of the Act of 1851 constitutional as the same affect perfect titles, seems to depend mainly on the question of inconvenience, which would result from the assertion of such titles by their owners, if allowed exemption from the provisions of those sections of the statute. The learned Justice says that, although it has been generally supposed that nearly all the private land claims in California, derived from the former governments, had been passed upon by the commissioners, "yet claims are now often brought forward, which have not been so passed upon by the board, and were never presented to it for consideration. And if the proposition on which the Supreme Court of California decided the case is a sound one, namely, that the board constituted under the act had no jurisdiction of, and could not by their decree affect in any manner a title which had been perfected under the laws of the Mexican government, prior to the transfer of the country to the United States, it is impossible to tell to what extent such claims of perfected titles may be presented, even in cases where the property itself had been by somebody else brought before the board and passed upon."

This objection to the assertion of right and title to lands owned and held in full property, seems not to require any extended consideration. Is it too much to say it is a fallacious and impotent objection? Can there be any reason why he who owned the land at the date of the cession of the country, and who had been lawfully seized of it ever since, should not retain it, or if ousted of it, should not be allowed to recover its possession, and have the enjoyment of it under the laws of the land? It is impossible to understand how the owner

of land by perfect title can be held to have lost his right to it because another person, without right or title, had secured to himself a confirmation, based on a false claim thereto, and a patent from the government, which had no right or title to such land.

Titles of superior and paramount character are the titles mentioned in the fifteenth section of the Act of 1851, which embrace and protect the interests of third persons, who can use the same in the maintenance of their possession and enjoyment of such lands, as against the United States or its grantees. These are the titles which Chief Justice Marshall in Clark's case, and Mr. Justice Baldwin in Strother vs. Lucas, and Mr. Justice Catron in United States vs. Wiggins, and Mr. Justice Clifford in Maguire vs. Tyler, and Mr. Justice Field in Beard vs. Federy, and in Waterman vs. Smith and other cases in the California Supreme Court, held to be of the character that needs no sanction nor aid from the political department of the government, and which can be used in the courts of the country in successful resistance to any adverse action of the United States or its grantees respecting them.

The fifteenth section of the act itself provided for the assertion of such titles; and the rights and interests thereby secured by any third person, who may be in position to do so, when necessary, as expounded in Waterman vs. Smith, and in Beard vs. Federy—an exposition and construction that has never been questioned by any court in the land. From such construction of said section it results logically, that perfect titles of individuals are superior and paramount to any claim or claims the government or its grantees may make to lands which such titles describe and embrace.

It is assumed in the opinion in the Dominguez case, that if the title was perfect, the board of commissioners and the courts to which it might be submitted, would decide the claim thus presented to be valid. This assumption is not fully warranted by experience in matters even of judicial investigations. That the commissioners and the District Court might decide erroneously, is assumed by the act itself, which provides for an appeal from their decisions, and though there can be no appeal from the court of last resort, that court cannot be said to be infallible; therefore, it would be possible for one owning land by such title, after all the labor and expense to which the government, by its legislation had driven him, to fail to satisfy the commissioners and the courts of the validity of his title, and so he would lose his land, notwithstanding his perfect title.

The Constitution was ordained "to establish justice," and it is for men imbued with the spirit of justice, to say if it be just to require individuals holding their lands by perfected titles, to submit their claims and titles to a board of commissioners, who might decide them to be invalid. Is it just to compel the owner of land in full property, in order to save it from forfeiture, to become the plaintiff in a proceeding in the nature of an action against the United States, in which government lawyers of learning and skill are employed by authority of the act itself, to oppose, and if possible, break down his title?

Congress may possibly enact laws in violation of common right and treaty stipulations and of the Constitution which provides for the security of vested rights. If Congress so transcends its power it becomes the duty of the courts, when the question is properly brought before them, to declare the invalidity of such laws. "Cases may occur," said the court in Strother vs. Lucas, "where the provisions of a law may be such as to call for the interposition of the courts."

It is believed by many able and learned lawyers, that the Dominguez case presented a palpable instance for the just exercise of judicial authority for pronouncing the eighth and thirteenth sections of the Act of 1851 invalid and void as to titles of the character of that of Dominguez to Rancho Las Virgenes; or perhaps more properly, by holding that inasmuch as Congress had no jurisdiction over perfect titles, the eighth and thirteenth sections of the act were not intended to include such titles and the lands held thereunder, even though the language of these sections were broad enough to embrace all claims to lands. Such a construction would relieve Congress from the imputation of any intention to transcend its powers. This would be within the rules of construction sanctioned by the highest courts of the land. It would avoid the strict letter of the statute in the ascertainment of the lawful intention of the legislature, *Qui haeret in litera, haeret in cortice.*

There are principles lying at the foundation of the Constitution which are as unerring as the law of gravitation, and which must endure in spite of the progressive tendency to legislative usurpation of power. These principles are imbedded in the Constitution, and are conserved in the opinions and decisions of our highest court in its earlier history, which, with lawyers and jurists had become the sacred scriptures of judicial learning and just exposition of organic law. Upon these decisions the people of our country had come to believe they were secure in all that pertained to civil liberty—the full and free enjoyment of life, liberty and property. The conflict between the doctrines of the decisions of the court of former years, and the doctrine of the Dominguez case, is plainly conspicuous and readily to be perceived by attentive comparison. Between these opposing doctrines, those who investigate and think and reason for themselves must make their choice, and decide on which side they will take their stand.

——*JOHN CURREY.*

San Francisco, Cal.

DEATH PENALTY FOR LARCENY

BY THE EDITOR

DEATH PENALTY *for* LARCENY

George Tanner was tried in Marysville in April, 1852, in the then Court of Sessions, upon an indictment regularly presented, for grand larceny, by stealing fifteen hundred pounds of flour, six sacks of potatoes, five kegs of syrup, two and one-half barrels of meal, one keg of powder, and one-half barrel of mackerel, the property of Lowe & Brothers, of the value of $400. While impaneling the jury the district attorney asked one of the panel if he had any conscientious scruples against the infliction of capital punishment. The answer was: "I would hang a man found guilty of murder, but I would not hang a man for stealing." The district attorney challenged the proposed juror, the court allowed it, the man was "excused," and an exception to the ruling of the court was taken by the prisoner's counsel. The jury being formed, the case was tried, and a verdict was returned,—"Guilty of grand larceny, punishable with death." The prisoner was sentenced to be hanged. He appealed to the District Court, which affirmed the judgment, and a further appeal was had to the Supreme Court. The latter tribunal was then composed of Chief Justice Hugh C. Murray, and Associate Justices Alexander Wells and Alexander Anderson. The case of Tanner was taken before them while they were holding the April term, A. D., 1852, at San Francisco, under an act of the legislature authorizing it so to do. The cause was argued before the Supreme Court on behalf of the prisoner by no less a light than General William Walker, the "grey-eyed man of destiny," who became famous alike in law, medicine and wild adventure, and whose pursuit of the vision of empire ended in his violent death. The attorney-general, S. C. Hastings, represented the people.

The Supreme Court affirmed the judgment of death. A petition for a rehearing was filed, and an order was made commanding the sheriff of Yuba county to stay the execution of the sentence until the 23d day of July, 1852, in order that an application for rehearing might be heard by the court. The application was heard by Justices Wells and Anderson, and was overruled July 16, 1852. It was ordered that Tanner be executed on the 23d day of July in

the manner prescribed by the original sentence, and he was executed accordingly.

At that day our law provided that any person found guilty of grand larceny should be punished by imprisonment in the State prison for a term of not less than one, nor more than ten years, or by death, in the discretion of the jury. In referring to this enactment, the Supreme Court said, in the case of Tanner: "We regret that our legislature have considered it necessary to thus retrograde, and in the face of the wisdom and experience of the present day, resort to a punishment for less crimes than murder which is alike disgusting and abhorrent to the common sense of every enlightened people."

But the question of the constitutionality of the law, or its invalidity for any reason, seems not to have been discussed before, or considered by the Supreme Court. The arguments of counsel were not preserved or written, but the Supreme Court opinion (by Murray), is found in the second volume of the reports of that court, at page 257. The appeal turned on the question whether the Court of Sessions erred in excluding from the jury the man who declared he would not hang another for stealing. It was held that the man, William Jackson, of Marysville, was properly excluded from the jury; the validity of the act, under which Tanner was hanged, was not attacked.

It is curious to note that while the old criminal law referred to did not permit a man to be imprisoned for grand larceny for a longer term than ten years, it yet authorized the jury to decree his death on the scaffold. The jump was a long one—from ten years' imprisonment to death!

Mr. George Congdon, of San Francisco, has informed the editor of this History that he was present in a concourse of three thousand people in the outskirts of Stockton, in the year 1852, and saw three men hanged at the same time for the crime of grand larceny (stealing cattle), whereof they had been regularly indicted and convicted by a jury in a legal court of justice. The sheriff of San Joaquin county, who officiated on the occasion, was the late Colonel R. P. Ashe, who left a large family and a valuable estate, and who is well remembered all over California. He was the father of Hon. R. Porter Ashe, of our own day.

The law of this State which first prescribed punishment for robbery and grand larceny, was passed, of course, at the first session of the legislature, in 1850. The penalty was alike for both offenses, namely, imprisonment for from one to ten years. It was at the second session, 1851, the draconian provision, authorizing juries in their discretion, to impose the death penalty for both robbery and grand larceny was passed, and approved by Governor John McDougal. This law remained in effect full five years. On April 19, 1856, it was amended, and at the same time a distinction made between the two crimes, so that robbery was punished by imprisonment for not less than one year, which might be extended to life, while the penalty for grand larceny was made from one to fourteen years' imprisonment, the court in all instances,

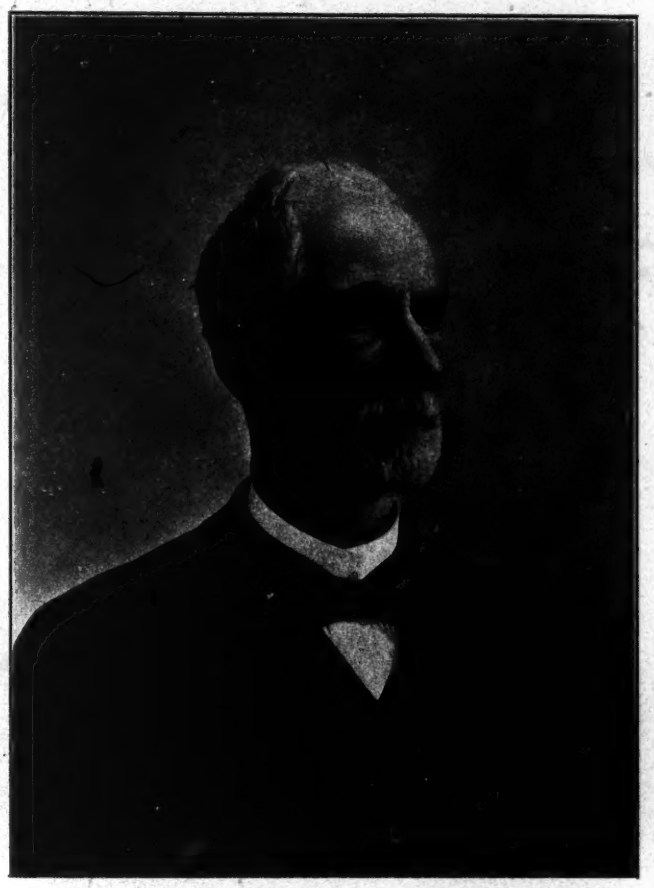
and not the jury, being the sole arbiter as to the length of the term. This law of 1856 was enacted by our only Know-Nothing legislature, and approved by J. Neely Johnson, our only Know-Nothing Governor. The degree of penalty for these crimes has fluctuated, but at present, it is for robbery, imprisonment from one year to life; for grand larceny, imprisonment from one to ten years, so that the present penalty for the latter crime is just the same as was prescribed by the original statute of the State.

Many cases similar to the above might be given. Three men were hanged in Sacramento in 1851 for a not very aggravated case of highway robbery. We had occasion many years ago to make allusion to these early trials, and thereupon a well-known editor of the time made these observations:

> No doubt at this distance the infliction of capital punishment for felonies other than murder must seem to have been draconian to an extent almost inconceivable. But at the time there could hardly be said to be organized society in California. The sternest measures were necessary to keep the vicious in subjection. The condition of things was as primitive as when the death penalty was prescribed in England for robbery. But when society in California became strong enough to deal with criminals of all grades and had jails to keep them in, our code became more mild—perhaps in some cases now, too mild.
>
> ——*THE EDITOR.*

THE RECOVERY OF THE PIOUS FUND

HON. JOHN T. DOYLE



John T. Doyle.
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RECOVERY *of the* PIOUS FUND

Some account of the origin and objects of the Pious Fund seems a necessary preliminary to a notice of the litigation to recover it. As all readers of Spanish colonial history are aware, the Spanish monarchs claimed title to the newly discovered Western lands, under a bull of Pope Alexander VI, dated May, 1493, which enjoined on them the duty of converting the inhabitants of those extensive regions to the Christian religion; and this object was steadily recognized by the Spanish crown as a duty incumbent on it. The missionary priest accompanied every expedition for discovery, occupation or subjugation, and the ecclesiastical conquest of the country kept pace with and sometimes preceded its reduction to civil allegiance.

In the sixteenth and seventeenth centuries, great importance was attached by Spain to the peninsula of Lower California, as a barrier against English aggression on Mexico, from the sea. And from the time of the discovery of that country in 1534 by an expedition fitted out by Cortez, its colonization and the conversion of its inhabitants to the Catholic faith was a cherished object with the Spanish monarchs. Many expeditions for the purpose were set on foot, at the expense of the crown, during the century and a half succeeding the discovery, but though attended with enormous expense, none of them were productive of the slightest good result. Down to the year 1697 the Spanish monarchs had failed to acquire any permanent foothold in the vast territory which they claimed under the name of California. The success of the Jesuit fathers in their missions on the northwestern frontier of Mexico, and elsewhere, induced the Spanish government as early as 1643 (on the occasion of fitting out an expedition for California under Admiral Pedro Portal de Casanate), to invite that religious order to take charge of the spiritual ministration of it and the country for which it was destined, and they accepted the charge, but that expedition, like all its predecessors, failed.

The last expedition undertaken by the crown was equipped in pursuance of a royal *cedula of* December 29, 1679. It was confided to the command of Admiral Isidro Otondo, and the spiritual administration of the country was

again entrusted to the Jesuits, the celebrated Father Kino being appointed *cosmografo mayor* of the expedition. Various circumstances conspired to delay its departure, and it only sailed on the 18th of March, 1683. Many precautions had been taken to ensure its success, but after three years of ineffectual effort and an expenditure of over 225,000 dollars, it was also abandoned as a failure, and at a *junta general,* assembled in the City of Mexico under the auspices of the viceroy, wherein the whole subject was carefully reviewed, it was determined that "the reduction of California by the means theretofore relied on, was a simple impossibility," and that the only mode of accomplishing it was to invite the Jesuits to undertake its whole charge, at the expense of the crown. This proposition was made, but it would seem that the conduct of the royal officers, civil and military, must have contributed to the previous failures, and probably for that reason, it was declined by the society, although the services of its members as missionaries were always freely placed at the disposal of the government.

Individual members of the society, however, animated by a zeal for the spread of the Christian faith in California, proposed to undertake the whole charge of the conversion of the country and its reduction to Christianity and civilization, and this without expense to the crown, on condition that they might themselves select the civil and military officers to be employed. This plan was finally agreed to, and on the 5th of February, 1697, the necessary authority was conferred on Fathers Juan Maria Salvatierra and Francisco Eusebio Kino, to undertake the reduction of California, on the express conditions, however: (1) That possession of the country was to be taken in the name of the Spanish crown, and (2) that the royal treasury was not to be called on for any of the expenses of the enterprise, without the express order of the king.

In anticipation of this result, Fathers Kino and Salvatierra had already solicited and received from various individuals and religious bodies, voluntary donations called *limosnas,* or alms, contributed in aid of the enterprise. The funds thus collected were placed in their hands, in trust, to be applied to the propagation of the Catholic faith in California, by preaching, the administration of the sacraments of the church, erection of church edifices, the founding of religious schools, and the like; in a word, by the institution of Catholic missions there under the system so successfully pursued by the Jesuits in Paraguay, Northern Mexico, Canada, India and elsewhere.

The earliest contributions thus obtained will be found detailed in Venegas' *"Noticia de la California,"* vol. 2, p. 12. Besides sums given to defray immediate expenses, it was determined to establish a fund or capital, the income from which should form a permanent endowment of the missionary church. Towards this latter object, the first recorded contributions seem to have been by the congregation of N. S. de los Dolores, which contributed $10,000, and Don Juan Caballero y Ozio, who gave $20,000 more. These donations formed

the nucleus of the fund destined for the propagation of the Catholic faith in California. It was increased from time to time by others, and in a comparatively few years attained magnitude and importance. It was invested and administered by the Jesuits in pursuance of the trust on which it was confided to them, and its income was the source from which was defrayed the annual expense attending the missions in California. In time, it acquired by common acceptance the name of "The Pious Fund of the Californias."

Among the most important contributions to the fund was one of the Marquis de Villa Puente and his wife, who in 1735, in addition to large previous donations, conveyed to the Society of Jesus, by deed of gift *inter vivos*, estates and property of great value and productiveness.

With Fathers Kino and Salvatierra were associated in the projected conquest, Fathers Juan Ugarte and Francisco Maria Piccolo; the former of these united to the zeal of the missionary a singular talent and aptitude for the management of business affairs, and he was accordingly at first constituted procurator, or man of business of the missions, to reside at Mexico. The latter was of a noble Italian family, distinguished as a scholar, and a writer of elegant and perspicuous style.

Father Kino was unable to accompany his associates to the scene of their labors, and the mission was commenced by Fathers Salvatierra and Piccolo, who, three years later, were joined by Father Ugarte. It would be out of place here to follow these heroic men in their apostolic labors. Father Salvatierra embarked at the mouth of the Yaqui river in a crazy little schooner, and after a short voyage of nine days reached California. Landing in an unknown country, remote from all supplies and communications, this intrepid missionary accompanied by a corporal and five men, with three Indian servants, deliberately aimed at no less an object than the spiritual conquest of the whole peninsula, and the country to the north of it, up the coast as far as Cape Mendocino. He was followed in a few weeks by Father Piccolo. The chronicle of the obstacles they surmounted, the privations, sufferings, and perils to which they and their subsequent companions were exposed, and in which some of them cheerfully perished, and of the success they finally achieved, is as full of romance, interest, and instruction as any in the annals of the New World. Besides the chief object of bringing the native population into the fold of the church, which was ever kept steadily in view, these remarkable men never lost sight of the interests of learning and science; they faithfully observed and chronicled all that was of interest in any branch of human knowledge, or capable of being useful to the colony or the mother country. It is a hundred years since the Jesuits were expelled from Lower California, yet to this day, most that we know of its geography, climate, physical peculiarities and natural history is derived from the relations of these early missionaries. By kindness and instruction, they gradually overcame the hostility of the native tribes, and during the seventy succeeding years gradually extended their missions from

Cape San Lucas up the peninsula, to the northward, so that at the period of their expulsion, they had established those of San José del Cabo, Todos Santos, Santiago de los Coras, Francisco Xavier, N. S. de Loreto, Santa Rosa de Muleje, San José de Comundu, San Ignacio, La Purisima de Cadegomo, Santa Gertrudes, N. S. de Guadalupe, San Francisco de Borja, and Santa Maria de los Angeles, which, with that of San Fernando de Villacata, founded by the Franciscans in May, 1769, on their march to San Diego, were all the missions of Lower California.

At this time the interior of Upper California was unexplored and its eastern and northern boundaries undefined. The outline of the coast had been mapped with more or less accuracy, by naval exploring expeditions fitted out by the crown, and by the commanders or pilots of the Philippine galleons, which, on their return voyages to Acapulco, took a wide sweep to the north, and sighted the leading headlands from as far north as the "Cabo Blanco de San Sebastian," down to Cape San Lucas. The whole coast as far north as Spain claimed, was called by the name of California. The terms Upper and Lower California, came into use afterwards.

The "pious fund" continued to be managed by the Jesuits, and its income applied in conformity to the will of its founders, and the missions of California remained under their charge down to 1768, in which year they were expelled from Mexico in pursuance of the order of the crown, or pragmatic sanction of February 27, 1767. Their missions in California were directed by the viceroy to be placed in the charge of the Franciscan Order. Subsequently a royal *cedula of* April 8, 1770, was issued, directing that one-half of these missions should be confided to the Dominican Friars; in pursuance of which, and a *"concordato"* of April 7, 1772, between the authorities of the two orders, sanctioned by the viceroy, the missions of Lower California, and the whole spiritual charge of that peninsula, were confided to the Dominicans, and those of Upper California to the Franciscans. The income and the product of the "pious fund" was thereafter appropriated to the missions of both orders.

The church when first established in Upper California, was purely missionary in its character. Its foundation dates from the year 1769; in July of which year, Father Junipero Serra, a Franciscan friar, and his companions, reached the port of San Diego, overland, from the frontier mission of Lower California, and there founded the first Christian mission, and first settlement of civilized men, within the territory now comprised in the State of California. Their object was to convert to Christianity and civilize the wretched native inhabitants, sunk in the lowest depths of ignorance and barbarism. In pursuit of this they exposed themselves to all the perils and privations of a journey of forty-five days across an unexplored wilderness, and a residence remote from all the conveniences and necessaries of civilized life, in the midst of a hostile and barbarous population, who requited the charity of the Christian missionary with the crown of Christian martyrdom. Father Junipero and his followers established missions among these barbarous people, from San

Diego as far north as Sonoma, at each of which the neighboring tribes of Indians were assembled and instructed in the truth of the Christian religion and the rudiments of the arts of civilized life. The missions of Upper California, and the dates of their foundation, were as follows:

San Diego, 1769; San Luis Rey, 1798; San Juan Capistrano, 1776; San Gabriel, 1771; San Antonio, 1771; Santa Ynez, 1802; San Miguel, 1797; San Buenaventura, 1782; San Rafael, 1821; La Soledad, 1791; Santa Barbara, 1786; La Purisima, 1787; El Carmelo, 1770; San Luis Obispo, 1772; San Juan Bautista, 1797; Santa Clara, 1777; San Jose, 1797; San Francisco de Assis, 1776; San Fernando, 1771; Santa Cruz, 1791; San Francisco Solano, 1823.

The missions were designed, when the population should be sufficiently instructed, to be converted into parish churches, and maintained as such, as had already been done in other parts of the viceroyalty of New Spain; but in the meantime, and while their missionary character continued, they were under the ecclesiastical government of a president of the missions. Father Serra was the first who occupied this office, and the missions were governed and directed by him and his successors as such, down to the year 1836, when the authority of this officer was superseded by the appointment of a bishop, and the erection of the Californias into a bishopric or diocese.

The text of the decree or pragmatic sanction, expelling the Jesuits from the Spanish dominions, is to be found in the *Novissima recopilacion*, and it directs *"que se ocupen todas las temporalidades de la compania en mis dominios."* Under this provision, the crown took all the estates of the order into its possession, including those of the "pious fund"; but these latter, constituting a trust estate, were of course taken *cum onere*, and charged with the trust. This was recognized by the crown, and the properties of the "pious fund," so held in trust, were thereafter managed, in its name, by officers appointed for the purpose, called a *"junta directiva."* The income and product continued to be devoted, through the instrumentality of the ecclesiastical authorities, to the religious purposes for which they were dedicated by the donors.

On the declaration of Mexican independence, Mexico succeeded to the crown of Spain as trustee of the "pious fund," and it continued to be managed and its income applied as before, down to September 19, 1836, when the condition of the church and of the missionary establishments in California seemed to render desirable the erection of the country into a diocese or bishopric, and the selection of a bishop for its government. The Catholic religion being the established religion of Mexico, and it being a known rule of the Holy See not to consent to the erections of new bishoprics in countries acknowledging the Catholic faith, without an endowment from some source adequate to the decent support of the bishopric, the law of the Mexican congress of September 19, 1836, was passed, which attached an endowment of $6,000 per year to the mitre to be founded, and conceded to the incumbent when selected, and his successors, the administration and disposal of the "pious

fund." As it formed the support of the church in his diocese, and the missionaries and their flocks were all his spiritual subjects, and his only ones, this under the canon law was a natural result, and its expression merely serves to mark clearly the recognized destination of the fund.

In pursuance of the invitation held out in this enactment, the two Californias, Upper and Lower, were erected by his holiness, Pope Gregory XVI, into an episcopal diocese, and Francisco Garcia Diego, who had until that time been president of the missions of Upper California, was made bishop of the newly constituted see; as such he became entitled to the administration, management and investment of the "pious fund" as trustee, as well as to the application of its income and proceeds to the purposes of its foundation, and for the benefit of his flock.

On February 8th, 1842, so much of the law of September 19, 1836, as confided the management, investment, etc., of the fund to the bishop, was abrogated by a decree of Santa Anna, then president of the Republic, and the trust was again devolved on the state; but that decree did not purport in any way to impugn, impair or alter the rights of the *cestuis que trust;* on the contrary, it merely devolved on certain government officers the investment and management of the property belonging to the fund, for the purpose of carrying out the trust established by its donors and founders.

On October 24th, 1842, another decree was made by the same provisional president, reciting the inconvenience and unnecessary expense attending the management of the various properties belonging to the "pious fund" through the medium of public officers, and thereupon directing that the properties belonging to it should be sold for the sum represented by its income, (capitalized on the basis of six per cent per annum), that the proceeds of the sale as well as the cash investments of the fund should be paid into the public treasury, and recognized an obligation on the part of the government to pay six per cent per annum on the capital thereof thenceforth.

In none of these acts was there any attempt to destroy or confiscate the property or impair the trust or the rights of the ultimate beneficiaries.

The property of the "pious fund" at the time of that decree of October 24th, 1842, consisted of real estate, urban and rural; demands on the public treasury for loans theretofore made to the state; moneys invested on mortgage and other security, and the like. The greater part of the property was sold in pursuance of the last mentioned decree for a sum of about two millions of dollars. The names of the purchasers are stated by Mr. Duflot de Mofras in his *"Exploration du territoire de l'Oregon et des Californies,"* etc., to have been the house of Baraio and Messrs. Rubio Brothers. In the sale of the properties of the "pious fund," the demands existing in its favor on the public treasury for loans to the government were not included; the items of the capital of those loans due at that time, exceeded a million of dollars. Some of these had preceded the severance of Mexico from the dominions of Spain, but being debts of the viceroyalty of New Spain, were assumed and recognized

as debts of the Mexican Republic, as well by the law of June 28th, 1824, as by Article VII of the treaty of December 28, 1836, between Mexico and Spain.

At the time of the seizure of the fund, the bishop's agent for its management was an aged gentleman, residing in the City of Mexico, called Don Pedro Ramirez. During the brief period of his stewardship, he had succeeded in terminating most of the litigation in which the junta directiva had involved it, had paid off its floating debt, cancelled unprofitable leases, and otherwise made it productive. When General Valencia informed him of his orders to seize the fund and rescue it from this wasteful sort of private administration, he thought it his duty to protest, however vainly, against the proceeding. He did protest, and had quite a lively correspondence with the General. The latter, however, was more of a soldier than a diplomatist, and presently threatened, after the manner of Brennus, to throw his sword and belt into the scale. Don Pedro, however, stood firm for a recognition at least of his position, and insisted on delivering the property according to an inventory, or *"instruccion circunstanciada,"* in which the exact state of the fund, the properties, the rents, the mortgage investments, etc., were all set out; and in deference to his age and character, and, I think I may add, to his pluck, the General consented, and the delivery was so made. The ship was sinking, but the old apoderado, like the heroic victims of the Birkenhead disaster, was determined to maintain his honor to the last, and go down with ranks dressed and to the word "Attention!" He drew up his *"instruccion circunstanciada"* in duplicate, delivered one copy, duly authenticated by himself, to General Valencia, and transmitted the other to his principal, with a copy of his correspondence preceding the final surrender, and thus the capital of the "Pious Fund of California," after about one hundred and sixty years of separate existence, was engulfed in the maelstrom of the treasury of the Mexican Republic.

The waste under the *junta directiva* and the necessity of repairing it out of subsequent income, had long deprived the missions of substantial aid from the "pious fund," and the remoteness of California from the central authority, with the stirring events of the war with the United States, which presently supervened, withdrew attention from the subject. The origin of the fund had been lost in antiquity; the older missionaries remembered that it once existed, and that Santa Anna had some way got away with it. The younger ones knew nothing more of it than the vague tradition of the country that it existed in former times. The State legislature in 1851 appointed a committee of enquiry on the subject, who examined all the old inhabitants as to what they knew of it, but was compelled to report that all it could discover was that such a fund once existed, and that it amounted to a large sum of money, but whence it was derived, how it arose, or what had become of it they could learn nothing. It was past finding out.

In 1853 Bishop Joseph S. Alemany brought me a small package of papers, which he had found in the archives of his predecessor in office, saying that they related to the "pious fund," and that he wished me to look them over and

tell him whether he had not some claim against the United States, or Mexico, for indemnity or compensation for Santa Anna's acts of 1842. I read them over, and, among much that was at the time unintelligible, found Don Pedro Ramirez's correspondence with General Valencia, and his *"instruccion circunstanciada,"* which gave me my first installment of solid information on the subject; not indeed very full or clear, but enough to build on. I could see no claim against the United States, and the deplorable state of public affairs in Mexico did not suggest any great value in a claim against her; although she appeared responsible for Santa Anna's acts of spoliation. I advised the bishop that whenever a convention for the settlement of private claims of American citizens against Mexico should be concluded, which was likely to occur some time, this claim would probably become presentable. In 1857 the bishop recurred to the subject and desired to enter into a contract for professional services in the case, and ultimately he, as Archbishop of San Francisco, and Bishop Thaddeus Amat, of Monterey, retained myself and another gentleman, now deceased, to endeavor to obtain for the church whatever she was entitled to in this connection. Then I began to read Mexican and California history and law, to ascertain how much could be discovered in printed publications about the "pious fund." And here Don Pedro Ramirez's methodical discharge of duty was of incalculable advantage to me. His *"instruccion circunstanciada"* named each piece of property, urban or rural, which he delivered over. Among them were the haciendas of "Guadalupe" and "Arroyo Sarco," the purchase of which I found mentioned in Venegas as far back as 1716, and those of "San Pedro Ibarra," "El Torreon," and "Las Golondrinas," which are named in the deed of the Marquis de Villa Puente and his wife, a copy of which I also found among the papers. These names enabled me to identify the property, and trace its acquisition as well as to furnish the exact terms of the trust, which were elaborately defined in the deed referred to.

Constantly on the alert for additional information, I read every scrap of Mexican history that I could find in print, and gradually I accumulated—sometimes from most unexpected places—the materials of the history I have related above, with abundant proofs of their accuracy. I discovered, too, a valuable precedent in the fact that a similar fund destined to the support of the missions in the Philippine Islands, had in the troubled early days of Mexican independence been taken into the public treasury, and, after the recognition of the Republic by Spain, been successfully reclaimed by the latter power and paid over by Mexico.

The historical investigation became more and more interesting as information accumulated, but it long seemed as if the pleasure derived from the study was to be the only reward for the labor it involved. Public affairs in Mexico became infinitely entangled, as one ruler succeeded another, and the prospect of a convention for the settlement of private claims against the Republic appeared so remote as to be lost sight of. I even ceased to examine the treaties at the conclusion of each session of Congress. The bishop ceased to

cherish, and finally dismissed from his mind, the hope of recovering anything on account of the "pious fund." My associate was in Washington absorbed in other affairs, public and private, forgot all about our retainer, and I myself ceased to think of the case in connection with any legal proceedings.

On Sunday, March 27th, 1870, I casually took up a New York paper, and my eye fell on a paragraph saying that Wednesday, the 30th instant, would be the last day for presenting claims to the mixed American and Mexican commission, then sitting in Washington. I was away from San Francisco at the moment, and no conveyance thither could be obtained before the next day. The "pious fund," as a case in my charge, had so long appeared a hopeless one, that I had not even observed that a claims convention had been agreed on between the two governments. I hurried to the city next morning, soon got hold of the convention of July 4th, 1869, and read it carefully. Demands presentable under it were limited to damages resulting from injuries to persons or property, committed by either Republic on the citizens of the other, since the Treaty of Guadalupe Hidalgo (February 2nd, 1848). It was clear that the original seizure of the "pious fund" and taking it into the public treasury in 1842 could not be made the subject of reclamation under the convention. I read it again with the mental enquiry, is it possible that we are utterly without remedy under this convention? The time for deliberation was very short; my client was away in Europe, his vicar-general knew nothing whatever of the matter, and my associate was in Washington, evidently oblivious to the whole affair. I had to decide on my own responsibility and act at once. I determined to abandon all claim for the property of the fund, treat Santa Anna's decree of October 24, 1842, as a purchase and sale of it, at the price and on the terms indicated in its text, and demand damages for nonfulfillment of the contract by payment of the interest accrued since the Treaty of Guadalupe Hidalgo. I despatched a telegram to Washington, outlining the claim in this form and desiring that it might be filed with the commission, and by the following Wednesday I had the satisfaction of learning that my message had been received and understood, and the claim seasonably presented.

In due course I prepared a memorial of the claim, as required by the rules of the commission (of which I fortunately discovered a copy in the possession of a friend in San Francisco, after fruitless efforts to obtain one from my associate in Washington), incorporating the historical matter given above, and adding in a printed pamphlet of 68 pages, extracts from historical works in Spanish, French, German and Italian, in support of the allegations of my memorial. The historical proofs when collected were overwhelming, not only of the objects of the fund and general subscriptions to it, but of particular donations of great magnitude. Hon. Caleb Cushing, who then represented Mexico, before the commission, demurred, and the demurrer was argued in writing, but never formally decided. After some delay, I began to fear that the life of the joint commission would expire before a decision on it, and without further delay proceeded to examine witnesses and file their depositions, so

far as living evidence was procurable. A point of great materiality, but specially difficult to establish, was the text of the Marquis of Villa Puente's deed; as well because of the large value of the property donated ($400,000) as by reason of the elaborate definition of the purposes of the trust. I knew the name of the notary before whom it had been acknowledged in 1735, and believed that the original might still exist in the archives of his successor, *more Mexicano*. General Rosekrans happened, opportunely, to be going to Mexico on business of his own, and kindly offered to take charge of any commission I might entrust to him. I furnished him with a power of attorney from the bishop, to demand from the successor of the notary an authenticated copy of the instrument. The General discovered the notary, and the deed was found among his files, but the gentleman was forbidden by some government officer to certify a copy of it! The General, however, had not been through the school of the Civil War, to pay much attention to objections that he deemed unreasonable, and without hesitation brought suit against the notary to compel the desired copy. The Mexican government intervened to prevent its production, alleging that it was only wanted as evidence against the government of the Republic. The court, to its honor, decided that the bishop was entitled to the copy without regard to the uses to which he might put it, and it came to me as the opime spoils of Rosekrans' successful campaign, authenticated solemnly, and preceded by the judgment roll in the action against the notary, which gave it, of course, additional force, as evidence, by showing the importance attached by the adverse party to its suppression, "*Haeret lateri lethalis arundo.*"

Don Manuel Aspiros succeeded Mr. Cushing as counsel for Mexico, and (the term of the commission having been prolonged), argued the case on its merits. His ability and professional attainments I need not speak of. His official connection with the state department of Mexico, and consequent familiarity with its records, added to his rich stores of historical and legal learning, made him a most formidable antagonist. He honorably declined any effort to obscure the facts, and practically accepted my history as a true statement of them. But he used all the resources of his great professional learning and historical erudition, with the strength of a giant, and the dexterity of a practiced debater. Though our conclusions differed *toto coelo*, I could not fail to admire the keenness of subtlety of his argument.

The commissioners differed in opinion, each writing an elaborate statement of his views. The case then went before Her Britannic Majesty's minister at Washington, as umpire, and now that victory was in sight, I had plenty of assistance. The case was argued before him not only by myself, but by Hon. Eugene Casserly and Messrs. P. Phillips and Nathaniel Wilson, of Washington, whom he had retained to aid him. For my own part, I never entertained a doubt as to the result, at the hands of a publicist of the rank and distinguished character of Sir Edward Thornton; and in fact he justified my confidence by deciding in our favor, in November, 1875. I thought his equal division of the

fund between Upper and Lower California—the one a sterile mountain chain, with a total population under thirty thousand souls, and the other a great and growing State, with a population of over half a million—and the denial of interest on installments in arrear, scarcely fair to my client. Sir Edward indeed, in his opinion, admits that he was not unmindful of the national misfortunes and poverty of Mexico, and as he saw his way clear to be merciful to her, far be it from me to censure the act.

> "Not the king's crown, nor the deputed sword,
> "The marshal's truncheon, nor the judge's robe,
> "Becomes them with one half as good a grace
> "As mercy does."

He determined that the sum annually payable by Mexico, to the church of Upper California for interest on the 'pious fund' was the half of $86,160.98, or $43,080.99, and awarded us twenty-one years' income at that rate, amounting to $904,700.79—all of which was honorably paid by Mexico in accordance with the terms of the convention.

After the conclusion of the proceedings I bound up into volumes as many copies of the printed papers in the case as my materials enabled me to, for deposit in public libraries, where they might be accessible to any persons to whom in the future they might prove of interest or value.

——*JOHN T. DOYLE.*

Menlo Park, Cal.

THE BONANZA SUITS OF 1877

JOHN H. BURKE

THE BONANZA SUITS *of* 1877

In 1877 John Trehane, a young English lawyer, in practice at San Francisco, satisfied himself, after an examination of the books of the Consolidated Virginia and California mining companies, that John W. Mackay, James G. Fair, Jas. C. Flood and Wm. S. O'Brien, directors and controlling spirits of those companies, were transferring the assets thereof to their individual pockets through the medium of certain contracts, made with the companies which they had organized and controlled, as will be explained herein.

Mr. Trehane endeavored to induce some one to begin suit upon these causes of action, but without avail. He finally came to me and I consented to join him, lending my name as plaintiff.

In May, 1878, I began an action in the old 12th district court against James C. Flood, the estate of Wm. S. O'Brien, John W. Mackay and James G. Fair to recover from them a little more than thirty-five million dollars, by reason of the misappropriation of the funds of the Consolidated Virginia Mining company. I began the suit as a stockholder in my own behalf, and that of all other stockholders who saw fit to join in the action or contribute to the expense.

The complaint was demurred to and the demurrer was argued at length before Judge W. P. Daingerfield, who finally decided that several parties and causes of action were improperly joined; and thereupon, I began a series of separate actions, as hereafter shown.

An action was begun against the defendants before named and the Pacific Mill and Mining company, which they owned and controlled, for something over twenty-six million dollars, for alleged excessive charges in milling the ores of the Consolidated Virginia Mining company, and misappropriation of its bullion through the manipulation of its slimes and tailings.

This case was argued at length on demurrer before Judge J. D. Thornton, who sustained the complaint and overruled the demurrer. But the action never came to final trial, as all the suits were terminated in 1881. Had this cause been tried, I should have produced witnesses to prove the value and number of

every bar of "Office Bullion" which had thus been appropriated by the defendants to their own use and amounting to many millions. I had witnesses to prove that the sweepings of the mill, which the defendants claimed as their own, often contained lumps of crude bullion as big as a plug hat.

The next case was for $10,429,000, and was begun before Judge E. D. Wheeler in the 19th district court. The cause of action arose out of the transaction had by James C. Flood, while a director of the Con. Virginia Mining company, with Thos. H. Williams, David Bixler, M. F. Truett, and others, who were the owners of small outstanding interests in the ground of said company.

It was proven upon the trial of the cause (one transaction in particular will explain all others) that James C. Flood purchased the ground for eighteen thousand dollars, causing to be issued in payment therefor, to himself, the stock of the company which was worth at the time $180,000, although the company itself had the ready means and could have purchased the ground for the same price that Mr. Flood secured it for ($18,000). The market price of the stock so issued, with dividends thereon, subsequently amounted to $10,429,000. This cause was tried before Judge J. F. Sullivan, presiding over department No. 2 of the Superior Court, in December, 1880, and all the testimony was published at length in the *Evening Bulletin*. The defendants were represented by Hall McAllister, T. I. Bergin and C. J. Hillyer. My attorneys were S. W. Holladay, John Trehane, and ex-Supreme Judge Nathaniel Bennett.

On or about March 30th, 1881, Judge Sullivan rendered his decision to the effect that I was entitled to recover about nine hundred and thirty thousand dollars, which was the amount of that part of the claim not barred by the statute of limitations. His decision will be found in the San Francisco *Chronicle* and *Bulletin* of about that date.

An action was also begun against the defendants as the organizers of the Pacific Wood, Lumber & Flume Co., for alleged excessive charges on wood and lumber supplied to the aforesaid mine and amounting to $4,000,000.

Separate actions were also begun against the same defendants and the Pacific Refinery and Bullion Exchange, for excessive charges in refining bullion of the Con. Virginia Mining company; against the Virginia & Gold Hill Water Co., for excessive charges in water furnished the Con. Virginia Mining company; and against the Nevada Bank of San Francisco for excessive discount on bullion. The total amounts claimed being $3,000,000.

But no one of these cases was ever tried, because of the settlement now to be mentioned.

During the three years that these several suits were in progress, numerous attempts had been made by the defendants to settle the same, but I refused to entertain any proposition until the court had passed on my legal rights. During the whole time I had supported myself with my pen, and had, both in the public press and personally, begged the larger stockholders to join me in

the action, by their own attorneys, or to pool their stock, pending the result of the cases, and if successful to pay to me and my attorneys a percentage of the amount recovered.

I remember well a number of interviews had with Peter Chrystal, one of the many large stockholders. He refused, repeatedly, to do anything. A friend of mine had a conversation with a very prominent and wealthy capitalist who was bitterly opposed to the Flood management of the mine, and tried to get him to assist, but without avail. And the same friend, also, had a conversation with a party of stockholders, representing claims amounting to over eight million dollars, which they could have recovered, asking them to agree to contribute 25 per cent if I succeeded in recovering the amount of their demands.

They absolutely refused to contribute one penny, although men of vast wealth, and openly boasted that they intended to participate in all the benefits of my labors, and would saddle the whole expense of the litigation upon me. And since I had begun the suits in my own behalf and that of all other stockholders who elected to join or contribute to my expenses and as the complaint so stated, I was compelled to entertain propositions of settlement, as, with two exceptions, none of the other stockholders would join me nor contribute to the cost of the suits. And with the consent of Mr. S. W. Holladay and John Trehane, my attorneys, and Squire P. Dewey and John L. Noyes—the only stockholders who had shown any disposition to join in the action, I settled the cases with Hall McAllister, attorney for the defendants, much against my desire.

The full terms of that settlement are private, but I have never heard any dissatisfaction expressed by any of the parties on my side of the question as to such settlement.

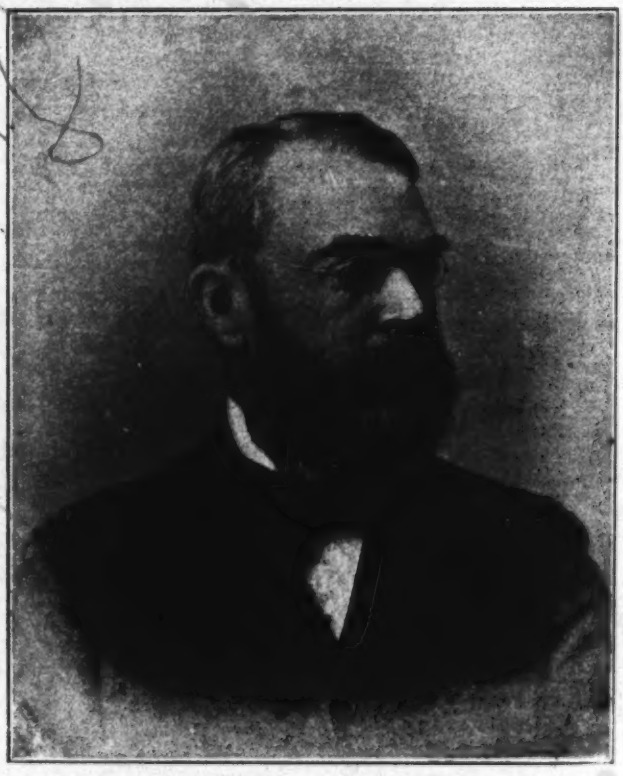
After the cases were dismissed, an attempt was made to set aside the dismissals, but the court held that for three years I had publicly sought the aid of all other stockholders in prosecuting said suits, but without avail, and that, since they had compelled me to prosecute the suits, unaided, I was entitled to do with them as I saw fit.

——*JOHN H. BURKE.*

Santa Clara, Cal.

IRRIGATION LAWS AND DECISIONS OF CALIFORNIA

HON. JOHN D. WORKS



John D. Works

IRRIGATION LAWS *and* DECISIONS *of* CALIFORNIA

In treating of the irrigation laws of the State, three classes of water consumers must be considered, viz: (1) riparian owners; (2) individual or private appropriators, and (3) appropriators of water for sale, rental or distribution to the public. These three classes of consumers are governed, in some respects, by entirely different principles of right, and by different laws. Therefore, in order to arrive at the rights of each and the laws by which they must be governed, they must be treated separately.

But, before taking up the questions about to be considered, specifically, a few general observations upon the condition and effect of our irrigation laws may not be out of place. And, in the beginning, it may be said that the laws of this State relating to this most important subject, are exceedingly crude and unsatisfactory. In the early history of the State, water was diverted and used mainly for mining purposes. The extent to which the waters of the State would be called upon for the purpose of irrigation for agricultural and horticultural purposes, particularly in the southern part of the State, was not thought of in the earlier stages of legislation regulating the use of water. When the importance to the State of the conservation and proper use of the waters of its running streams came to be realized, and it was feared that they might be monopolized by corporations for purposes of gain, the law-making power unwisely enacted such legislation as to discourage the investment of capital in the diversion, storage and distribution of water, by which the State, and particularly the southern part of it, where water for irrigation purposes must be had, if at all, by the expenditure of large sums of money in storage reservoirs, in wells, underground works and distributing systems, has been seriously damaged and its growth retarded beyond the belief of the unthinking, whose efforts have been directed, apparently, to the suppression of corporations organized to develop and supply water to the public. The provision of our constitution, which places the fixing of water rates in the hands of the consumers themselves, or their representatives, instead of some disinterested court or body,

is a striking example of this unwise, not to say vicious, legislation. And the narrow and illiberal construction placed upon the constitution, and laws enacted in pursuance of its provisions by courts and judges, has aggravated the unjust and evil effects of this class of legislation.

The future growth and prosperity of the State must depend, in great measure, upon the encouragement, by just and liberal laws, judicially construed in the same spirit of right and justice, of the investment of capital in works for the diversion, storage and distribution of subterranean waters and the storm waters of the winter months, for use during the irrigation season, and for the protection of capital already invested in such and other enterprises for the increase and appropriation to beneficial uses of the water to be had by the legitimate expenditure of capital. By this it is not meant that the State should not maintain its control over the waters of its streams, or regulate, by just and wholesome laws, the appropriation and distribution of such waters, with a view to preventing the same being taken up and monopolized for private gain and profit by the exaction of unreasonable rates for water used. But it is a reproach to the State that it should say, by its constitution, to every individual or corporation that has invested, or proposes to invest, money in an enterprise fraught with such benefit to the community to be supplied with water, and indirectly to the whole State, "You can charge no more for the water you supply than those to whom you supply it shall determine to be just, on penalty of forfeiture of your plant."

This is practically the law of this State, as will appear farther along, as it relates to the appropriation of water for sale, rental or distribution. As a result of this pernicious course of legislation, the investment of capital for the development and increase of the water supply of the State has almost entirely ceased, and will not be renewed under existing laws.

As to the appropriation of water for private use, the laws of the State are not subject to the same criticism. They are nothing more than useless, as we shall see directly; consequently but little harm can come from them. We need a new body of laws for the regulation of the appropriation, for private use, of the waters of the streams of the State, that will protect all interests as fully as human laws may compass that object, and conserve the supply and insure its distribution to the best advantage, and to the largest area of land.

The writer has been asked to supply a history of the irrigation laws of the State, and the decisions of the courts thereon, together with his own views as to the proper construction of such laws, and their legal effect, and as to the decisions affecting the same. This is a perilous undertaking. The great diversity of opinion on the part of judges and lawyers and the confusion growing out of the many conflicting and wholly irreconcilable decisions relating to the subject, renders it impossible for any one to say what the present construction of some of these laws is, and none but a prophet can foretell what conclusions will finally be reached by the courts on some of the most important questions involved.

But, fortunately, I am not expected to determine what *others* may think, or believe, respecting the irrigation laws of the State, but to express my own views and convictions as to the effect of such laws and what has been said or decided regarding them, judicially or otherwise. This will be done with a full appreciation of the fact that whatever may be said on many of the important questions involved will meet with the opposition of many able lawyers with whom I have come in contact in litigation over these same questions, and for whose opinions I have the most profound respect. Again, the views here expressed will not accord, in some respects, with the decisions of some of the highest courts of the country. But while such decisions are entitled to respectful consideration, they are not binding upon me on this occasion, and I disagree with them with less trepidation because so many others, judges, courts and lawyers, have done the same. Therefore, I shall not hesitate to express my own convictions, giving due prominence and consideration, at the same time, to the expressed views of others, whether agreeing with my own or not.

OF THE LAWS AFFECTING THE RIGHTS OF RIPARIAN OWNERS.

We have no statutory laws establishing or defining the nature or extent of the rights of riparian owners. Their rights are, of course, modified, or otherwise affected, to some extent, by statutory provisions relating to the appropriation of water, but such statutes are not directed at them or their rights. However, controversies may and do arise, not only between riparian owners themselves, claiming water from the same stream, but between them and appropriators of water. The effect of existing statutes providing for and regulating the appropriation of water, will be considered when we come to that branch of the subject. In this connection, they will be taken into account only indirectly as they affect the conflicting rights of the riparian owners.

The question of the extent of the rights of riparian owners in and to the waters of a stream flowing past their lands, for purposes of irrigation, has been before the courts of this State many times, and with varying results. The leading case on the subject is Lux. v. Haggin, 69 Cal. 255. There the effort was made to define and measure the rights of a riparian owner in this State by the common law doctrine on the subject. The contest was a prolonged and bitter one. The court was divided on the question whether the common law must be applied, in this State, or whether it *should* be modified by the existing natural conditions prevailing, on the ground that the common law doctrine, if maintained, would result in ruinous consequences, and whether the common law doctrine *was* modified by our code provisions providing for the appropriation of water. The opinions delivered in this case are of great interest and exhibit great learning, industry and research on the part of the

justices delivering them. The majority opinion sustained the contention that the common law must prevail, and that the court must not be swerved from its enforcement by the plea of differing conditions and injurious consequences. But the court, while not overuling this case, has, in numerous subsequent cases, departed from it, and the court, in that and later cases, has done precisely what it was then held could not be done, allowed the necessity for some different rule of right, as between the riparian owners themselves and between them and the appropriator, to prevail over the law as it was then declared to be.

But, strangely enough, while the main question in that case was whether the common law right of a riparian owner should be recognized as existing at all in this State, or not, and the right was upheld, manifestly, only because the majority of the court felt constrained to that conclusion by strict rules of law, that and later cases, or some of them, have extended the right of a riparian owner far beyond that vested in him at common law, and has thus, in a measure, if not entirely, subverted and destroyed the common law riparian right.

The right of a riparian owner at common law is to the use of the water as it naturally flows, in quality, and without diminution in quantity, except as it may be diminished by the reasonable use by other riparian owners, for domestic, agricultural, and manufacturing purposes. And as this right is the same in every owner of land bordering on the stream, there can be no such diversion or use by one owner as will materially diminish the quantity or deteriorate the quality of water flowing past any other riparian owner on the stream. Or, as said in Angell on Watercourses, Section 93:

> "A water course begins *ex jure naturae*, having taken a course, naturally, *cannot be diverted. Aqua currit et debet currere, ut currere solebat*, is also the language of the ancient common law. That is, the water runs naturally, and should be permitted thus to run, so that all through whose land it runs may enjoy the privilege of using it."

Again it is said by the same author, Section 93a:

> "The law has been supposed to be well settled, and in my opinion is nowhere more clearly stated than by Lord Kingsdown, in Miner vs. Gilmour, 12 Moore P. C., 156. He says, 'By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of water flowing past his land; for instance, to the reasonable use of the water for domestic purposes, and for his cattle, and this without regard to the effect which such use may have in case of a deficiency upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, *provided he does not thereby interfere with the rights of other proprietors, either above or below him.* Subject to this condition, he may dam up a stream for the purposes of a mill, or divert the water for the purpose of irrigation. But *he has no right to intercept the regular flow of the stream,* if he *thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury.*' The use in all the above cases must be a reasonable one."

Many decided cases might be cited to the same effect, but it is unnecessary, as the rule, thus limited, is firmly established and well understood.

But in the very case in which this doctrine is upheld and enforced as applicable to the conditions in this State, it is held that a riparian owner has the right, as such, to a reasonable use of the water for purposes of irrigation.

Lux v. Haggin, 69 Cal. 255, 394.

And this doctrine has been adhered to in some of the later cases:

Harris v. Harrison, 93 Cal. 676;

Wiggins v. Muscupiabe L. & W. Co., 113 Cal. 182, 190;

Smith v. Corbit, 116 Cal., 587;

Heilbron v. Land & Water Co., 80 Cal. 189.

The doctrine thus modified and the reasons for it are thus stated in Harris v. Harrison, *supra* (p. 680):

> "According to the common-law doctrine of riparian ownership as generally declared in England, and in most of the American States, upon the facts in the case at bar, the plaintiffs would be entitled to have the waters of Harrison canyon continue to flow to and upon their land, as they were naturally accustomed to flow, without any substantial deterioration in quality or diminution in quantity. But in some of the Western and Southwestern States and territories, where the year is divided into one wet and one dry season, and irrigation is necessary to successful cultivation of the soil, the doctrine of riparian ownership has by judicial decision been modified or rather enlarged, so as to include the reasonable use of natural water for irrigating the riparian land, although such use may appreciably diminish the flow down to the lower riparian proprietor. And this must be taken to be the established rule in California, at least, where irrigation is thus necessary. (Lux vs. Haggin, 69 Cal., 394). Of course, there will be great difficulty in many cases to determine what is such reasonable use; and 'what is such reasonable use is a question of fact, and depends upon the circumstances appearing in each particular case.' (Lux vs. Haggin, 69 Cal., 394.) The larger the number of riparian proprietors whose rights are involved, the greater will be the difficulty of adjustment. In such a case, the length of the stream, the volume of water in it, the extent of each ownership along the banks, the character of the soil owned by each contestant, the area sought to be irrigated by each,—all these, and many other considerations, must enter into the solution of the problem; but one principle is surely established, namely, that no proprietor can absorb all the water of the stream so as to allow none to flow down to his neighbor."

Under this declaration of the rights of riparian owners, it is presumed that such owners must be regarded as equally entitled to share in the waters of the stream and in equal proportions, for purposes of irrigation. It certainly cannot be that there can be any preferred right to the use of any given quantity of water as the result of a prior diversion and use of it. And so the Supreme Court has treated their rights by holding that the court may decree division of the water between them.

Wiggins v. Muscupiabe Water Co., 113 Cal. 182.

But it is entirely inconsistent with and antagonistic to the conclusion reached in the first case cited, that the common law riparian right prevails in this State, because, whenever a riparian owner "diverts" any part of the natural flow of the stream, which he must do in order to use it for purposes of irrigation, he necessarily violates the common law right of every other

owner along the stream to have the same flow, naturally, and without diminution. In Lux v. Haggin, the common law riparian right is clearly enough defined and its extent and limitations are emphasized by quotations from law-writers on the subject as follows:— (Pp. 390, 391.)

> "As to the *nature* of the right of the riparian owner in the water, by all the modern as well as ancient authorities, the right in the water is *usufructuary*, and consists not so much in the fluid itself as in its uses, including the benefits derived from its momentum or impetus. (Angell on Watercourses, Sec. 94, and notes.)
>
> "But the right to a watercourse begins *ex jure naturae*, and having taken a certain course naturally, it cannot be diverted to the deprivation of *the rights* of the riparian owners below. So say all the common-law text-books and the decisions. (Angell on Watercourses, Sec. 93.) *Aqua currit, et debet currere, ut currere solebat*, is the language of the ancient common law. (Angell on Watercourses, Sec. 93; Shury vs. Pigott, Bulst., 399; Countess of Rutland vs. Bowler, Palmer, 390.)
>
> "'*As a general proposition*, every riparian proprietor has a natural and equal right to the use of the water in the stream adjacent to his land, *without diminution or alteration*.' (Washburn on Easements and Servitudes, 319.)
>
> "'Riparian proprietors are entitled, in the absence of grant, license or prescription limiting their rights, to have the stream which washes their lands flow as is wont by nature, without *material* diminution or alteration.' (Gould on Waters, Sec. 204.)
>
> "'Each riparian proprietor has a right to the natural flow of the watercourse undiminished except by its reasonable consumption by upper proprietors.' (Angell on Watercourses, c. 4, *passim*.)
>
> "The right to the flow of the water *is inseparably annexed to the soil*, and passes with it, not as an easement or appurtenant, *but as a parcel. Use* does not create, and *disuse* cannot destroy or suspend it. Each person through whose land a watercourse flows has (in common with those in like situation) an equal right to the benefit of it as it passes through his land, for all useful purposes to which it may be applied; and no proprietor of land on the same watercourse has a right unreasonably to divert it from flowing into his premises, or to obstruct it in passing from them, or to corrupt or destroy it." (Chief Justice Shaw, in Johnson vs. Jordan, 2 Met., 239.)"

This statement of the law cannot be reconciled with the other position taken by the court, in the same case, that a riparian owner may make a reasonable use of the water for irrigating his land. The distinction between a riparian right to the use of the water and the right of an appropriator is here wholly overlooked or disregarded. The right of the one is to use the water as it passes without diverting, or, if diverting it, for purposes of manufacture, for example, returning it to the natural stream again; and, in either case, without any material diminution in the quantity of the natural flow. The right of the other is to *divert* or take from the natural flow of the stream all or a part of the water there flowing, without obligation to return it to its natural channel again. So, when the court held that a riparian owner might, by virtue of his right as such, use the waters of the stream for irrigation purposes, it clothed him also with the rights of an appropriator. And by so doing, it brought the rights of riparian owners on a stream in direct conflict with each other because the diversion of any water from the stream for the purpose of

irrigation, or the *appropriation* of it, for that is what it is, essentially, and as matter of law, must of necessity be an interference with and diminution of the right of every other riparian owner on the stream for the reason that it does divert a part of the waters of the stream, never to be returned, and therefore diminishes the quantity of water naturally flowing therein. If the court had held that so long as there was water in the stream sufficient for use by all riparian owners for irrigation, as well as other purposes, the use of water for purposes of irrigation by one would not amount to an actionable injury to another such owner, the position would have been unassailable, not because the court was right in respect of its views as to the extent of the riparian right, but because, under the conditions prevailing in this State, the use of surplus water could not be prevented by a riparian owner when such water was not necessary to his own use for like purposes. But, this conceded, the doctrine of the decision as to riparian rights loses all its force as in justice it should.

However this may be, the most important question disputed and decided in the case referred to, viz: whether by our statutes providing for the appropriation of water the rights of riparian owners were modified or taken away, is yet to be noticed.

It must be conceded that the right of appropriation is inconsistent with and antagonistic to riparian rights. The two cannot exist together, and participate in the benefits of the use of the waters of the same stream. This is necessarily so, because whenever an appropriator diverts any part of a stream from the natural channel and conducts and uses it upon his land, he thereby diminishes the quantity of water flowing naturally past the lands of the riparian owners below the point of diversion. Therefore, the exercise of the right of an appropriator infringes upon and takes from the right of the riparian owner. The law-making powers, state and national, in providing for the appropriation of water, must have done so with knowledge of the fact that the riparian owner was, at common law, entitled to have the *whole* of the waters of the stream flow past his lands. And, when the legislature of this State and the Congress of the United States authorized and provided for the appropriation of the stream, or any part thereof, they abrogated the common law right of the riparian owner to the extent such appropriation was permitted. In our legislation there is no limitation of the amount of water that may be taken from a stream by appropriation. The right extends to the entire flow of the stream. This being so, it must be manifest that the legislature *intended* to substitute for the riparian right which was limited to lands bordering on the streams in the State, and confined to such use of their waters as would make them of but little benefit, even to such owners, the right of appropriation, which gives the right to the use of the entire flow of every stream in the State for all legitimate and useful purposes, to be divided equitably to property owners making such appropriation, no one appropriator to take

from the stream more than is reasonably necessary for the purposes for which he makes the appropriation. And, not only is it manifest that this was the intention of the legislation referred to, because the two rights are directly conflicting and the establishment of one is the abrogation of the other, but such legislation was obviously for the best interests of the State. This view was very clearly and forcibly put by Mr. Justice Ross in his dissenting opinion in Lux v. Haggin. He says (p. 450):

> "The common-law doctrine of riparian rights being wholly inconsistent with and antagonistic to that of appropriation, it necessarily follows that when the federal and State governments assented to, recognized, and confirmed, with respect to the waters upon the public lands, the doctrine of appropriation, they in effect declared that that of riparian rights did not apply. The doctrine of appropriation thus established was not a temporary thing, to exist only until some one should obtain a certificate or patent for forty acres or some other subdivision of the public land bordering on the river or other stream of water. It was, as has been said, born of the necessities of the country and its people, was the growth of years, permanent in its character, and fixed the *status* of water rights with respect to public lands. No valid reason exists why the government, which owned both the land and the water, could not do this. It thus became, in my judgment, as much a part of the law of the land as if it had been written in terms in the statute-books, and in connection with which all grants of public land from either government should be read. In the light of the history of the State, and of the legislation and decisions with respect to the subject in question, is it possible that either government, state or national, ever contemplated that a conveyance of forty acres of land at the lower end of a stream that flows for miles through public lands should put an end to subsequent appropriation of the waters of the stream upon the public lands above, and entitle the grantee of the forty acres to the undiminished flow of the water in its natural channel from its source to its mouth? It seems to me entirely clear that nothing of the kind was ever intended or contemplated. Of course, the doctrine of appropriation, as contradistinguished from that of riparian rights, was not intended to, and indeed could not, affect the rights of those persons holding under grants from the Spanish or Mexican governments; first, because the doctrine is expressly limited to the waters upon what are known as public lands; and secondly, because the rights of such grantees are protected by the treaty with Mexico and the good faith of the government.
>
> "It is the rights of such riparian proprietors as *those* that are unaffected by the doctrine of appropriation, and *those* are the riparian rights that are excepted from the operations of the provisions of the Civil Code in relation to 'water rights' by section 1422 of that code, which reads: 'The rights of riparian proprietors are not affected by the provisions of this title.' That code, as well as the other codes of California, went into effect the first day of January, 1873. The appellants contend, and the prevailing opinion holds, that by the section of the Civil Code just quoted, the legislature of the State declared that the common-law doctrine of riparian rights should apply to all the streams of the State. It seems very clear to me that this is not so, for many reasons. Leaving out of consideration the question whether it lay in the power of the State to nullify the doctrine of appropriation established by the United States with respect to the waters flowing over their lands,—established, too, in pursuance of the policy the State itself had previously adopted, and for the advancement of the interests of the people of the State, I find nothing in the Civil Code, or in any of the other codes, to indicate any intention on the part of the legislature of the State to return to the doctrine of riparian rights with respect to the waters upon the public lands. On the contrary, the

> code enacts in statutory form, in language as clear as language can be made, the theretofore prevailing law of appropriation. Title 8 of the Civil Code is headed 'Water Rights.' The first section of that title—section 1410 of the code—declares: 'The right to the use of running water, flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation.'
>
> "Can anything be clearer? By the common law, the water flowing in a river or stream, or down a canyon or ravine, could *not* be acquired by appropriation, and must continue to flow in its natural channel undiminished in quantity and unaffected in quality. Could there be any clearer declaration of the fact that the common-law doctrine of riparian rights should not apply to the streams of this State than is found in this declaration of the statute that the waters of such streams may be acquired by appropriation?"

This paper cannot be extended by any attempt to review the authorities bearing on this important question, nor is it necessary. They were fully considered in Luz v. Haggin, up to that time, and there has been practically no change in the attitude of the Supreme Court on the subject, except as the Court has given way in some cases to the absolute necessity of modifying the strict rule of the common law as to riparian rights without overruling Lux v. Haggin, or establishing any new rule of law as between riparian owners and appropriators.

But Section 1422 of the Civil Code should not be overlooked. It provides in terms:

> "The rights of riparian proprietors are not affected by the provisions of this title."

To give full force and effect to the language of this section of the Code as applying to common law riparian rights, would be to nullify entirely every other provision of the title of the code relating to and authorizing the appropriation of water, of which it is a part, because there could by no possibility be an appropriation of any part of a stream of water without affecting such riparian rights. Probably the only construction that can reasonably and properly be given to this section, in connection with other provisions authorizing and regulating the appropriation of water, is the one given to it by Justice Ross in his dissenting opinion above quoted from, viz: that the reservation of riparian rights from the effect of the provision for the appropriation of water must be confined to certain riparian rights of those persons holding under grants from the Spanish or Mexican governments, "because the doctrine is expressly limited to the waters upon what are known as public lands; and secondly, because the rights of such grantees are protected by the treaty with Mexico and the good faith of the government."

Such a construction will give effect to the section referred to and preserve the right of appropriation given by other sections of the title. This section was repealed in 1887, reserving vested rights. (Statutes 1887, p. 114.)

But as practically all riparian lands had passed into private ownership before its repeal, this action is of but little consequence.

Other of the semi-arid States have taken quite a different view of this question of riparian rights. It may be of interest, in this connection, to note

the position taken by law-makers and courts of other States respecting this important question. The case of Stowel v. Johnson, 26 Pac. Rep. 290, is an interesting one. In that case, the Supreme Court of Utah said:

> "Riparian rights have never been recognized in this territory, or in any State or territory where irrigation is necessary; for the appropriation of water for the purpose of irrigation is entirely and unavoidably in conflict with the common-law doctrine of riparian proprietorship. If that had been recognized and applied in this territory, it would still be a desert; for a man owning ten acres of land or more, near its mouth, could prevent the settlement of all the land above him. For at common law the riparian proprietor is entitled to have the water flow in quantity and quality past his land as it was wont to do when he acquired title thereto, and this right is utterly irreconcilable with the use of water for irrigation. The legislature of this territory has always ignored this claim of riparian proprietors, and the practice and usages of the inhabitants have never considered it applicable, and have never regarded it."

See Kinney on Irrigation, Secs. 272, 273, 412, 424, 442, 457, 467, 477, 494, 508, 517, 547, 573;

Reno Smelting Co. v. Stevenson, 21 Pac. Rep., 317;

Atchison v. Peterson, 20 Wall., 507.

One of the states has made the common law doctrine of riparian rights a part of its organic law. But in most of them, the law-making power has left the subject severely alone, so far as any direct legislation on the subject is concerned, but the courts must deal with it without statutory aid or direction. But as this paper is to deal only with the irrigation laws and decisions of California, it would be out of place to go extensively into the laws and decisions of other States. They will be referred to, therefore, only in a brief way, and mainly for purposes of illustration, and with a view of ascertaining the law as it is in this State, together with any suggestions that may be made as to desirable changes and modifications of our own laws. As the law of this State stands today, the common law of riparian rights is in force. But those rights are so entirely opposed to the best interests of the State that they are being but little regarded in the actual distribution and use of water, and therefore the conclusion of the Supreme Court that they must be respected, as existing rights, in this State, has not been as harmful as was at first anticipated. It is believed that one of the strongest reasons for this is that the owners of riparian rights have found that in order to make their rights of any value, for purposes of irrigation, they must become appropriators of the water. And the Supreme Court has practically nullified the common law right to water by recognizing and making part of it the right of appropriation for irrigation. The practical effect of it really is to give the owner on the stream a preferred right to *appropriate* so much of its waters as he may reasonably need for the irrigation of his riparian lands.

Harris v. Harrison, 93 Cal. 676.

And while the Court has enlarged the right of the riparian owner, by allowing the diversion and use of the waters of the stream for irrigation, it has, on the other hand, *limited* his right by holding that he cannot complain

of an appropriation of a part of the stream above him, when the water diverted would not be used by him.

Modoc L. & L. S. Co. v. Booth, 102 Cal. 151, 156.

But his injury by an unlawful diversion cannot be held to be inconsiderable because it is incapable of ascertainment or cannot be measured in damages.

Heilbron v. Canal Co., 75 Cal. 426.

This is, of course, an infringement upon the common law riparian right of the land owner, which entitled him to the flow of the entire stream undiminished in quantity. Under the common law doctrine, the question whether he could use the water in no way affected or limited his right. It was simply a giving way by the Supreme Court to the necessity, growing out of the prevailing conditions in this State, to curtail the common law right of the riparian owner in order to conserve the waters of the State and allow its more extended use.

But the very same thing that would justify the court in enacting and enforcing this limitation of the common law right would have justified it equally in holding, in the first instance, that the common law right was not applicable to the conditions prevailing in this State, and that the common law respecting it was never in force here.

The right of the riparian owner, as thus expanded and limited to suit the exigencies of the situation, by the Supreme Court, is, according to the decided cases in this State, the subject of sale and transfer by him, and may be lost by grant, condemnation or prescription.

Gould v. Stafford, 91 Cal. 146;
Alta Land &c Co. v. Hancock, 85 Cal. 219;
Sprague v. Heard, 90 Cal. 221.

But this, again, is wholly inconsistent with the common law right which is a part of the land to which it is annexed. Of course, he could grant or convey his right *with the land of which it is a part,* but not otherwise, because when severed from the land it is no longer a riparian right, but that right is wholly destroyed. Therefore, it is certainly an error to say that a riparian right may be conveyed separate from the land. The party to whom the conveyance is made may obtain the right to the use of the water, but it is no longer a riparian right.

But "*use* cannot create and *disuse* cannot destroy or suspend it."

Lux v. Haggin, 69 Cal. 391;
Stanford v. Felt, 71 Cal. 249.

And the lease for a definite term of the right of such owner to the use of the water does not estop him from asserting his riparian right after the expiration of such lease.

Swift v. Goodrich, 70 Cal. 103.

The right of an appropriator acquired before a riparian owner secures his title from the United States has, as against such owner, a prior right to

the water appropriated by him and reasonably necessary for the purposes for which it has been appropriated.

Osgood v. Eldorado Water and Deep Gravel Mining Co., 56 Cal. 571;
Faulkner v. Rondoni, 104 Cal. 140;
Ramelli v. Irish, 96 Cal. 214.

And it is not necessary that the appropriation shall be made by a compliance with the Code provisions regulating the same, but an actual diversion and use of the water for a beneficial purpose is just as effective to the extent of such diversion and use as if the statute has been followed.

Wells v. Mantes, 99 Cal. 583;
De Necochea v. Curtis, 80 Cal., 397.

The rights of riparian owners will be further touched upon in considering the right of appropriators now to be taken up. While it has seemed necessary to treat of each of these rights separately, it is desired to avoid mere repetition as far as possible.

OF THE RIGHTS OF THE APPROPRIATOR OF WATER FOR PRIVATE USE.

This branch of the subject has been anticipated somewhat in what has been said in discussing the questions relating to riparian rights. But it calls for a more specific consideration. In treating of this subject, it is important to inquire:

1. What water is the subject of appropriation;
2. For what purposes it may be appropriated;
3. Where it may be appropriated;
4. How it may be appropriated;
5. The effect of the appropriation;
6. How the right acquired by appropriation may be lost.

What water may be appropriated.

By our code the right of appropriation is confined to "running water flowing in a river or stream or down a canyon or ravine."

Civil Code, Section 1410.

This would undoubtedly include any and all water courses in the State. But what constitutes a water course or "running" water is not always easy to determine. Where water connected with or augmenting the flow of a stream ceases to be running water, within the meaning of the appropriation laws, and must be classed as "percolating" water, is not always easy of solution. And this is important, because percolating water is not the subject of appropriation, but is a part of the body of the soil in which it is found, and may be taken out by the owner of the land, no matter how injurious such action on his part may be to an adjoining land owner.

Gould v. Eaton, 111 Cal. 639;
Hanson v. McCue, 42 Cal. 303;

Southern Pacific R. R. Co. v. Dufour, 95 Cal. 615;
Vineland Irr. Dist. v. Azusa Irr. Co., 126 Cal., 486.

But running water, as contradistinguished from water percolating through the soil, may be appropriated, subject, of course, to the rights of riparian owners and prior appropriators.

It is, perhaps, more than ordinarily difficult to determine, in this State, whether water found underground is percolating or running water, on account of the natural conditions that prevail here. Along the course and at the mouth of almost every canyon or ravine in the State will be found valleys composed, in large part, of gravel and boulders through which water can pass with more or less freedom; and the beds of the streams of the State are usually composed of the same material of varying depths, the bed rock rising and falling, and in the valleys through which it passes spreading out to varying widths, thus forming successive reservoirs along the course of the streams, of all sizes and depths, with one large reservoir in the valley below. Where these natural conditions prevail, the running stream undoubtedly stores these natural reservoirs with water, year after year, aided, in many cases, by springs and other sources of supply, and the subterranean waters move on to the sea with the surface flow above, but on account of the obstructions in its course, while it is moving water, it moves more or less slowly, depending upon the nature of the deposit through which it passes, whether coarse or fine sand, gravel or boulders. This subterranean body of water is connected with the surface flow and supports and maintains it, thus augmenting the amount of water that may be derived for irrigation by the appropriation of the surface flow. This leads to the inquiry that has received the attention of the courts: Is this subterranean flow *a part of the stream*, or, with the surface flow above it, *the* stream; or, to state it differently: Is it "running water" within the meaning of the code. If it is, it may be appropriated; otherwise, not. As to what is necessary to constitute a watercourse, Mr. Angell in his work on Watercourses, Sec. 4, says:

> "A watercourse consists of *bed, banks, and water;* yet the water need not flow continually; and there are many watercourses which are *sometimes* dry. There is, however, a distinction to be taken in law between a regular flowing stream of water, which at certain seasons is dried up, and those occasional bursts of water, which, in times of freshet, or melting of ice and snow, descend from the hills and inundate the country. To maintain the right to a watercourse or brook, it must be made to appear that the water usually flows in a certain direction, and by a regular channel, with banks and sides. It need not be shown to flow continually, as stated above, and it may at times be dry; but it must have a well-defined and substantial existence. A mere right of drainage over the general surface of land is very different from the right to the flow of a stream or brook across the premises of another. 'It is not essential to a watercourse that the banks should be absolutely unchangeable, the flow constant, the size uniform, or the waters entirely unmixed with earth, or flowing with any fixed velocity; but the law does not and cannot fix the limits of variation in these particulars.'"

And the decided cases in this and other States agree, substantially, with this definition or description of a watercourse.

Gould v. Eaton, 111 Cal. 639;
Hoyt v. City of Hudson, 27, Wis. 656;
Earl v. DeHart, 12 N. J. Eq. 280;
McClure v. City of Red Wing, 28 Minn. 186;
Gibbs v. Williams, 25 Kan. 214;
Weis v. City of Madison, 75 Ind. 241;
Pyle v. Richards, 17 Neb. 180;
Eulrich v. Richter, 37, Wis. 226;
Luther v. Wannisimmet Co., 9 Cush. 171;
Simmons v. Winters, 27 Pac. Rep. 7;
Barnes v. Sabron, 10 Nev. 217.

But in most of the cases cited, the courts were dealing with the distinction between water courses and mere surface water resulting from rainfall and other temporary or intermittent causes. The distinction we are striving to arrive at is that between "running" and "percolating" water. It is not difficult, except where the subterranean water is not connected in any apparent way with a running stream, either above or under ground. But if it is connected with a running stream, the question to be determined is whether it of itself constitutes a water course within the proper legal meaning of the term, or is it a part of such stream. If it is either it is running water and may be appropriated under our code. The fact that it runs under ground in no way affects the question.

City of Los Angeles v. Pomeroy, 124 Cal., 597.
Vineland Irr. District v. Azusa Irr. Co., 126 Cal. 486.

In the last case cited, the court said (pp. 494, 495):

> "It is essential to the nature of percolating waters that they do not form part of the body or flow, surface or subterranean, of any stream. They may either be rain waters, which are slowly infiltrating through the soil, or they may be waters seeping through the banks or bed of a stream, which have so far left the bed and the other waters as to have lost their character as part of the flow. If these waters which the court describes were in fact percolating waters, then plaintiff had the unquestioned right to take them by its tunnel; and, even if injury resulted to other appropriators or riparian owners upon the stream, they could not be heard to complain. Yet the court grants these defendants an injunction against plaintiff to restrain it from taking such waters. The findings, therefore, must be construed—and they are fairly susceptible of this construction—to mean that plaintiff was drawing its waters from within the bed and channel of the stream, and from its sub-surface flow. *That one may be a lawful appropriator of such waters there can be no question. To hold otherwise would be to deprive vast tracts of arid land of waters thus obtained and now beneficially used and employed upon them, and limit the legal taking of waters to the surface flow alone.* The existence of a well-defined sub-surface flow within the bed and banks of streams such as this is well recognized. Says Kin. Irr., Sec. 44: 'At certain periods of the year water flows on the surface in a well-defined course, and there is at times what is

known as the 'under-flow.' This is the broad and deep subterranean volume of water, which slowly flows through the sand and gravel underlying the most, if not all, the streams which traverse the country adjacent to the mountain systems of the arid regions. These underground streams are probably much greater in volume in some cases than the water upon the surface, and are, as far as rights of appropriation or riparian rights are concerned, but a valuable portion of the well-defined surface stream.' Indeed, illustration of the fact that the trial court itself must of necessity have considered that the taking of subterranean waters from the stream by means of such as those employed by plaintiff was a legitimate mode of appropriation is furnished by the finding that the defendant, the Azusa Water Development & Irrigation Company, gave notice of appropriation as requirel by the Code, and proceeded by its tunnel to develop and secure this underflow in manner precisely that employed by plaintiff, and the court distinctly finds that it was a legal appropriator of waters from this same stream.

"We therefore hold it to be the law, and we think it to be a moderate and just exposition thereof, that one may, by appropriate works, develop and secure to useful purposes the sub-surface flow of our streams, and become, with due regard to the rights of others in the stream, a legal *appropriator of waters by so doing.* That plaintiff thus was, at the time of the institution of its action, an appropriator, permits of no doubt, but its appropriation was legal only so far as its taking did not imperil or impair the rights of others superior to its own. One may not, of course, tunnel into the bed of such a stream, or dam its underground flow, and by such means draw away either subterranean or surface waters the rightful use to which has been secured by others. If, upon the other hand, one can, by development, obtain subterranean waters without injury to the superior rights of others, clearly he should be permitted to do so."

This is the declaration of the Supreme Court of the State on the subject, and states definitely the question of law involved, establishing the right of appropriation of subterranean waters constituting or forming part of a "stream." This leaves only the question of fact whether or not, in each case, the water in controversy is in fact a part of the stream, or is percolating water. This question of fact may not always be easy of solution. Where the dividing line between what shall be held to be running water and what mere percolating water, shall be drawn, must depend upon the facts in each case. The law applicable to the facts, when found, is definitely and rightly settled. It is so clearly to the best interests of the State that all flowing water shall be subject to appropriation so that the same shall be conserved and applied to beneficial uses, that in all cases where there is doubt as to the class in which a given water supply belongs, the doubt should be resolved in favor of its being running water and subject to appropriation.

But one of the most interesting questions of fact likely to arise in cases of conflict between appropriators of the surface flow of the stream and appropriators of the subterranean flow is how far the diversion of the underground flow is an encroachment on the rights of the appropriator of the surface flow. It is not infrequently the case that the bed of the stream is several hundred feet wide from bank to bank, while the stream flowing on the surface covers but a few feet. Of course a surface dam or other obstruction by which the surface flow is diverted does not intercept the underground flow, but allows it to pass

on down stream. The water thus allowed to pass, whether it be immediately under the surface stream or to one side of it, but within its banks is a part of the stream, subject to appropriation. And, not being intercepted or diverted by the diversion of the surface flow, it is *surplus* water which a subsequent appropriator may take out and use. This is clear enough. But the troublesome question of fact is whether by intercepting the subterranean flow at a given point and removing it from the bed of the stream, by a tunnel, for example, he thereby diminishes the surface flow at the point of diversion of the prior appropriator of that flow. If he does, he infringes on the rights of the prior appropriator, and may be enjoined from making or continuing such diversion.

Subject to this liability, he has the undoubted right to make the appropriation.

Vineland Irr. Dist. v. Azusa Irr. Co., 126 Cal. 486;
Trustees of Delhi v. Youmans, 50 Barb. 316.

But there is a better remedy in case of a conflict between the rights of the two appropriators under such circumstances. In such case there is surplus water flowing away under ground that is wholly lost if the appropriator of the surface flow is allowed to enjoin the appropriator of the subterranean flow from making his diversion. In such case, a court of equity has power to ascertain the quantity of water flowing in the stream and award to the first appropriator the amount of water to which he is entitled on account of his diversion of the surface flow, and the balance, which has been added to the available supply by the appropriation of the subsequent appropriator, to him. In no case should the party who has appropriated the surface flow, only, be allowed to prevent the later claimant from participating in the waters of the stream at all, by showing merely that in taking out the surplus flow his supply is diminished. The whole of the waters diverted should be equitably divided between them, in order that none of the water shall be allowed to go to waste.

There is another element of uncertainty as to the rights of claimants to the waters of certain streams that has come about by the increase of the flow by the very act of irrigation. It is noticeable in some localities that since extensive irrigation has been practiced along some of the water courses it has augmented the flow of the streams below. Not only so, but in some places, tracts of land that formerly were "dry," have, by irrigation of lands above them, become "water bearing" lands, some of them cienegas or swamps. This is easily accounted for. As said above, the course of the streams of the state is, in many cases, through a succession of valleys that are natural reservoirs. Subterranean water has been brought to the surface and applied to irrigation. A part of this water passes on to lower levels and in places finds its way into the stream and in other places into lands below. When it finds its way into a stream and becomes a part of the flow, it is undoubtedly subject to appropriation. If it passes into other lands below and remains there, it is a part of

the land itself, belongs to the owner of the land, and is not the subject of appropriation. Assuming that this excess of water has become a part of the stream, either below or above ground, to whom does it belong? In many cases, it was not appropriated water in the first instance, or the subject of appriation. It has been drawn from artesian wells, or was percolating water that has been pumped from under ground and applied to irrigation. But, having been thus brought into use, the very use of it has brought the underground water to a higher level, so much so that some of the water passes off down to and along a near-by running stream. If the users of water from the stream have appropriated a certain quantity of water from the running stream and this addition to the flow has increased the quantity of water to an amount in excess of such appropriation, the solution of this question is easy enough. The added water is "surplus" water, and may be appropriated by another. But suppose an appropriation has been regularly made, so far as the act of giving notice and performing work under the code is concerned, but the amount filed on is not there, in the beginning, but is made good by the water added as above indicated? What then? Is such an appropriator entitled to this new supply of water? It would seem that under such circumstances the appropriator would be entitled to the augmented quantity up to the amount filed upon by him, or so much thereof as may be necessary for his use. In other words, this gradual accession to the flow of "running water" which is the subject of appropriation under our laws, must, whenever it assumes that form, be controlled by such laws the same as other like waters. The fact that it has been added to the stream by artificial means not intended to have that result cannot be allowed to alter the rules of law affecting the use of such water. And if it has not been so concentrated as to become a water course, or "running water," within the law of appropriation of itself, or mingled with and become a part of an already existing water course, but has percolated through and onto lower lands, and there remains stationary or in a state of percolation, it is clearly not within the law of appropriation, but is a part of the land in which it is found, and subject to the use of the owner of the property. If the rights of riparian owners are to be upheld, either as they existed at common law or in the limited, enlarged, or modified form resulting from the decided cases in this State, the rule must be the same, depending upon the nature this additional water supply has assumed, that is to say, whether it has become part or all of a water course, or is percolating water.

For What Purposes Water May Be Appropriated.

The only statutory limitation of the purposes for which water may be appropriated is that it "must be for some useful or beneficial purpose."

Civil Code, Section 1411.

In the early history of the State, the most important use made of water appropriated, aside from domestic use, was for the operation of mines. And this use still continues in some localities. But at the present time, by far the

most of the water used is for the irrigation of trees and growing crops. It may be appropriated, however, for mining, milling, irrigating, agricultural, horticultural, domestic, or any other useful or beneficial purpose. The appropriation, to be valid, must be made with the intention of using it for some such purpose.

Pomeroy on Rip. Rights, Sec. 47;
McKinney v. Smith, 21 Cal. 374;

And there can be no distinction as to the rights of appropriators growing out of the different purposes for which the appropriation is made.

Ortman v. Dixon, 13 Cal. 33;
McDonald v. Bear River &c. Water Co., 13 Cal. 220.

Where Water May Be Appropriated.

It is often said, and said in some of the decided cases, that water can only be appropriated on government land. It is a little difficult to understand where this idea ever originated. There is nothing in the code of this State limiting the *place* where appropriations of water may be made. They may be made on the public lands, because the Congress of the United States has recognized the right. So far, there can be no question. But it does not follow that the appropriation cannot be made on other lands if leave to do so is obtained. Of course, no filing can be made on the private lands of another, without his consent, simply because it would be a trespass, the same as an entry upon land for any other unlawful purpose. But the private owner may grant, or consent to such entry and filing upon his lands, the same as the national government may do the same thing. And there is no reason why the owner of land through which a stream passes may not appropriate the water flowing therein on his own land. It is believed, however, that the limitation of the place of appropriation to public lands is entirely unwarranted, and that a valid and legal appropriation of water may be made anywhere along the course of a running stream, the waters of which are subject to appropriation, where the appropriator has the right, by virtue of his own ownership of the land over or through which the stream flows, to enter upon such stream, or the consent of anyone else having such right, by virtue of his ownership of land over or through which the stream flows. And this is placed upon the ground that the law or right of appropriation of this State contains no limitation as to the place where an appropriation may be made, and therefore the right exists at any point on the stream, subject only to the rights of others that cannot be violated by entering upon their lands for the purpose of making the appropriation. As we have seen above, a riparian owner may convey away to another his right to the waters of a stream. It would be singular, therefore, if he could not grant the right to enter upon his lands to make the diversion by which the appropriation of the water must be effected. But if he does not, no entry can be made on his lands to make or complete an appropriation of water.

Taylor v. Abbott, 103 Cal. 421.

How the Water May Be Appropriated.

The right of appropriation of water on the public domain is recognized and allowed by acts of Congress, and rights already vested are preserved.

U. S. Rev. Stat., Secs. 2339, 2340;

19 U. S. Stat. at Large, 377, Chap. 107;

Jacob v. Lorenz, 98 Cal. 332;

Broder v. Water Co., 101 U. S. 274;

Wells v. Nantes, 99 Cal. 583;

Jennison v. Kirk, 98 U. S. 453.

The acts of Congress on the subject do not create any new right of appropriation. They only preserve and protect rights already accrued and vested by the law or customs of the State.

Jennison v. Kirk, 98 U. S. 453;

Broder v. Water Co., 101 U. S. 274.

The manner of making the appropriation is not provided. That is left to legislation or prevailing custom in this State. It is a mistake to suppose that an irrigator obtains his rights from the national government, further than that his right to appropriate water *on government lands* is recognized, if not granted, by act of Congress, or that the manner of making an appropriation is governed or controlled by laws enacted by Congress. His rights are, except as above stated, controlled entirely by state laws. The laws of this State provide specifically how appropriation of water may be made:

Sec. 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purposes for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it.

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

Sec. 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain; *provided*, that if the erection of a dam has been recommended by the California debris commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water.

Sec. 1417. By "completion" is meant conducting the waters to the place of intended use.

Civil Code, Secs. 1415-1417.

The final and one of the necessary acts of appropriation in any case, is the

application of the water to some beneficial use, and the proceedings must be with that intention and for that purpose.

Civil Code, Secs. 1411, 1415;
Pomeroy's Rip. Rights, Secs. 47, 49;
Tanner's High Line Canal &c. Co. v. Southworth, 21 Pac. Rep. 1028;
Fort Morgan L. & C. Co. v. South Platte Ditch Co., 30 Pac. Rep. 1032;
Davis v. Gale, 32 Cal. 26;
Maeris v. Bicknell, 7 Cal. 261;
Combs v. Agricultural Ditch Co., 28 Pac. Rep. 966;
Weaver v. Eureka Lake Co., 15 Cal., 271.

And if the claimant proceeds under the code provisions for the appropriation of water, he must, after posting and recording the required notice, prosecute the work necessary to make the diversion with ordinary and reasonable despatch. The law does not require unusual or extraordinary effort.

Ophir Mining Co. v. Carpenter, 4 Nev. 534.

These provisions regulating the manner in which water may be appropriated are entirely inadequate. There is no limitation upon the amount of water that may be appropriated; no means by which the quantity of water flowing in the stream during the irrigating season can be ascertained; no means provided by which the amount actually appropriated by the final act of supplying the water to a useful purpose, can be ascertained in any satisfactory way. The result is that on almost every stream in the State filings have been made upon many times the quantity of water flowing therein, and it is impossible, by any record required to be kept, to determine how many of the filings have been made good by doing the work required by the statute to be done and the application of the water filed upon, or any part of it, to a beneficial use. It can be done only by an actual inspection on the ground. The result is that the rights of riparian owners and appropriators on the different streams are in a condition of almost inextricable confusion that can be remedied only by expensive litigation, to establish, by judicial decree, the rights of the various claimants. And such a decree can hardly be expected to result in an equitable and just division of the water between the contending parties. It must be to a great extent a guess and an arbitrary division made by the court. The only thing that can be claimed for such a mode of fixing the rights of the parties is that the extent of their claims is made a matter of record and is binding on the parties to the suit and parties taking under them from that time. But it is a nefarious law that permits such confusion of rights and claims and imposes the burden upon irrigation of settling claims to water at such enormous expense. The utter insufficiency of the law of this State regulating the appropriation of water is well understood by all who have had occasion to deal with it. But there seems to be but little disposition to remedy the evil by just and effectual laws. Much money is being expended by associations, and others interested, to induce the national government to

appropriate money to provide works to store and supply water to arid lands. The effort is commendable. But the enterprising citizens who are urging this course might well look closer at home and provide by proper legislation, for the care and conservation of the water we have and the protection of *bona fide* claimants of water who have already expended their means in diverting and applying to beneficial uses in which the whole State is interested, the water already developed. In speaking of the existing laws regulating the appropriation of water, Prof. Elwood Mead, formerly State Engineer of Wyoming, who has given the subject much intelligent thought, has this to say in a paper entitled "Water Rights on the Missouri River and its Tributaries:"—

> "On many rivers there are now a multitude of claims to the common supply. These rights have to be defined in some way. If laws do not define them, a resort to the courts is all that intervenes between the just rights of water-users and anarchy. In many States the exigencies created by a failure to enact an administrative code have compelled the courts to become practically both the creators and enforcers of water laws. They have to devise a procedure for adjudications, supplement the statute law in deciding what rights have been established, and finally have to protect irrigators' priorities by a liberal exercise of government by injunction. The growing volume of this litigation, together with the uncertain and contradictory character of many of the decisions, is making it a heavy burden to irrigators and a serious menace to progress. Unless it can in some way be restricted, it threatens to impair the value of investments in ditches and the success of this form of agriculture. In ten years the water-right litigation of one State is estimated to have cost over a million dollars. In many sections it has exceeded the money expended in constructing the ditches in which it has its origin.
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> "These conditions are not met with in every State. In two States it costs an appropriator less to establish his right to water than it does to prove up on the land it fertilizes, and it is done by the same direct methods. Litigation is conspicuous for its absence, either in acquiring water rights or in preventing interference by subsequent appropriators with their enjoyment. In these two States public control of streams is as much a part of the state government as is the control of public land a part of the national government.
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> "Wherever rights to water are restricted to its beneficial use, and where such use is followed promptly by the determination of the extent of such rights, controversies are as rare as they are over land filings; and where these laws begin by prohibiting speculative filings and end with adequate protection for just ones, there are no more contests among farmers who depend on rivers than there are between those who depend on rain. Litigation does not arise because irrigators desire it. It has its origin either in ignorance of the law or in its imperfections."

This is a just criticism on existing laws in this State. In some of the states, as said in this extract, better and more efficient laws have been enacted. For example, in the State of Wyoming a system of procedure has been provided for that goes far to remedy the defects from which we suffer. It is worthy of notice in this connection. Briefly stated, its prominent features are these:

A state board of control is provided for, composed of the state engineer and four superintendents, one from each of four water districts into which the

state is divided, and of which the state engineer is president. The state engineer has administrative control of streams and all appropriations there from are subject to his examination and approval. It is the duty of this board to ascertain and record the amount of water flowing in the streams in the state. No valid appropriation of water can be made on any stream except upon application to the state engineer and approval by him, and a permit issued by him is the only accepted evidence of title to water. The form of application for leave to appropriate water is provided for and furnished. Construction of ditches or other means of diverting and using the water must be commenced within one year and be completed within the time fixed in each case by the state engineer. Holders of approved permits are required to report the completion of the ditch or canal, and the application of water to a beneficial use. If this is not done on proper request, the permit is cancelled. Notices of complete beneficial use of water under a permit are filed with the state engineer and submitted by him t othe board of control at its next regular meeting. It then becomes the duty of the superintendent of the division where the water is used to ascertain, by a personal survey, whether the conditions of the permit have been complied with, and to take the sworn proof of the appropriator. The report of the examiner, and the proof of the claimant, are submitted to the board of control, at its next regular meeting, and if approved, a certificate of appropriation is issued and the title is complete.

This summary is taken from a fuller statement of the law and its operation and effect found in the paper of Prof. Mead above referred to. Such a law fairly and intelligently administered and enforced would be a great improvement of our own crude and unsatisfactory code provisions. It would be necessary, in applying such a law to our present conditions, however, to provide, first, for ascertaining and determining, in some binding way, all claims now existing on the streams of the state, either by the board of control, if one should be provided, or some other authorized body, of which a public record should be made, and thereafter the claims of new applicants for the waters of such streams could be controlled in some such way as that provided in Wyoming. Other states have similar provisions, but in most of them all questions of title to water, or water rights, must be settled, if at all, by the unsatisfactory and expensive process of litigation in court. In some of the states, notably in Colorado, special proceedings for the settlement of conflicting claims to water, and the adjudication thereof, by the courts, have been provided for. But they are cumbersome and expensive, and must be unsatisfactory.

But, unsatisfactory as our laws for the appropriation of water are, our Supreme Court has held again and again that an appropriation may be legally made without compliance, or attempt to comply, with the code. All that is necessary is an actual diversion from the stream and the application of the water diverted to some beneficial use.

De Necochea v. Curtis, 80 Cal, 397;
Burrows v. Burrows, 82 Cal. 565;
Wells v. Mantes, 99 Cal., 583;
Watterson v. Saldumbehere, 101 Cal., 107.

The only material differences between an actual appropriation without compliance with the code, and one made by following the code provisions, are that the right acquired by the former is confined to the quantity of water actually diverted and used, at the time the claim is asserted; while by the giving of the notice required by the statute and doing the necessary work to make it effective, the claim relates back to the time when the notice was given, and covers the amount of water that shall be put in use within a reasonable time, as against subsequent claimants.

Wells v. Mantes, 99 Cal., 583;
Pomeroy Rip. Rights, Sec. 54.

But it was held in an early case that where work had been diligently prosecuted in the construction of a ditch for the diversion of water, the doctrine of relation applied independently of the statute, and the rights of the appropriator related back to the time of commencement of work on the ditch.

Kimball v. Gearhart, 12 Cal., 27.

But certainly this case is in conflict with the later decisions on the subject.

This preferred right is about all the advantage to be had by complying with the statutory requirements.

By an actual appropriation of water, a claimant thereto may not only establish his rights as against subsequent claimants, but by the continued adverse use of it he may maintain his claim against riparian owners and prior appropriators.

And the manner of acquiring a water right is not confined to the appropriation thereof by the claimant. He may also acquire it by purchase from another.

Doyle v. San Diego Land and Town Co., 46 Fed. Rep., 709;
Kinney on Irr., Sec. 285;

And, as we shall see when we come to consider appropriations for public use, such a right may also be acquired by condemnation.

Upon a review of this branch of the subject in hand, one cannot but feel the need of an intelligent revision of our entire system of laws relating to the appropriation and use of water. The subject is one of such vast importance to the State and the laws are so imperfect and inadequate that it is amazing that some improvement of the laws should not have been made long before this.

Effect of the Appropriation.

The general effect of the appropriation of water is to give to the appropriator the preferred right to the continued use of the amount of water appropriated, subject, of course, to the rights of superior riparian rights and prior appropriations.

Under our statute, and independent of it, the rule "first in time, first in right," prevails between appropriators.

Civil Code, Sec. 1414.

As between appropriators and riparian owners, the rule is different. The right of the riparian owner, as we have seen, grows out of his ownership of land bordering on the stream. It does not depend upon his actual use of the water as in case of an appropriator. He does not lose his right by a mere failure to exercise it by a diversion or use of the water. He may lose his right, however, by suffering some one else to use it adversely. The question of priority of time as between a riparian owner and an appropriator can arise only in respect of the time such owner acquired title to his land, and the time of the appropriation by another, unless the question of continued adverse use arises. In this respect, the question of time is important because, if the appropriation is made before the riparian owner acquires title from the government, the appropriator is first in time and first in right.

As to the extent of an appropriator's claim, in case of an actual appropriation without compliance with the statute, it is confined to the amount of water actually diverted and used, while in case of an appropriation by following the statutory provisions, he is entitled to an amount of water reasonably necessary for the purpose for which the appropriation is made, provided it is applied to such use within a reasonable time; and in case of such an appropriation, the question of time relates to the date of giving the notice, and not to the date of the actual diversion and use of the water. But in all cases, no matter how the appropriation is effected, the amount of water the appropriator is entitled to take from the stream is confined to the quantity reasonably necessary for his use.

Atchison v. Peterson, 20 Wall., 507, 514;
Barnes v. Sabron, 10 Nev., 217, 243.

But he may apply the water he has appropriated to a different use, provided the change does not injuriously affect other vested rights.

Ramelli v. Irish, 96 Cal., 214;
Gallaher v. Montecito W. Co., 101 Cal., 242;
Davis v. Gale, 32 Cal., 26.

And, subject to the same limitations, he may change his place of diversion on the stream.

Civil Code, Sec. 1412;
Jacob v. Lorenz, 98 Cal., 332;
Junkans v. Bergin, 67 Cal., 267;
Gallaher v. Montecito W. Co., 101 Cal., 242;
Davis v. Gale, 32 Cal., 26.

The purpose of the law, and the decided cases, is to perfect and protect the rights of appropriators of water from the streams of the State, according to their priorities, but, at the same time, to confine their claims and their use of

water to the amount reasonably necessary for their purposes, thus conserving the water and extending its benefits as far as is consistent with the necessities of those who desire to share in such benefits. This being so, the common custom of filing on a stream for a large amount of water when only a small amount is needed, only tends to complicate the conditions and can result in no benefit to the appropriator, as the amount he attempts to appropriate by his notice is not the measure of his rights in the water of the stream, but the amount he uses or needs and may put to a beneficial use within a reasonable time; and surplus water is always open to appropriation.

Natoma W. & M. Co. v. Hancock, 101 Cal., 42.

But the courts have shown a disposition to construe the statute liberally in favor of the appropriator of water under it in respect of the attempt to comply with its terms in making the appropriation.

Osgood v. El Dorado Water &c. Co., 56 Cal., 571.

So if the appropriator has filed and recorded a notice substantially in conformity to the statute and prosecuted the work of diversion with reasonable diligence to completion, his appropriation is complete.

Civil Code, Sec. 1416;

Osgood v. El Dorado Water &c. Co., 56 Cal., 571;

Under our code, the work necessary for the diversion includes the conducting of the water to the place of intended use.

Civil Code, Sec. 1417.

But where the diversion is for the irrigation of land, it is believed that a reasonable time should be allowed for getting the land in cultivation and making the application of it.

Conant v. Jones, 32 Pac. Rep. (Ida.), 250.

How Right Acquired by Appropriation May Be Lost.

In this respect, the right of an appropriator differs from that of a riparian owner, in that while the latter cannot lose his right by mere failure to use the water to which he is entitled, such non-user on the part of an appropriator may amount to an abandonment of and loss of his rights.

Kirman v. Hunnewell, 93 Cal., 519.

So he may lose his rights by adverse use of the water by another.

Faulkner v. Rondoni, 104 Cal., 140;

Gallaher v. Montecito &c. W. Co., 101 Cal., 243;

American Co. v. Bradford, 27 Cal., 360;

Union Water Co. v. Crary, 25 Cal., 504;

Cox v. Clough, 70 Cal., 345.

And by grant, as an appurtenant to the land irrigated.

Crooker v. Benton, 93 Cal., 365.

Or even without conveyance of the land.

McDonald v. Bear River &c. Water Co., 13 Cal., 220, 232;

Pomeroy's Rip. Rights, Sec. 58;

Fort Morgan L. &c. Co. v. South Platte Ditch Co., 30 Pac. Rep., 1032;

Thomas v. Guiraud, 6 Col., 530;
Kelly v. Natoma Water Co., 6 Cal., 105;
Strickler v. Colorado Springs, 26 Pac Rep., 313.

And by condemnation.

San Francisco and Alameda Water Co. v. Alameda Water Co., 36 Cal., 639;
Spring Valley Water Works v. San Mateo Water Works, 64 Cal., 123.

OF APPROPRIATION OF WATER FOR SALE, RENTAL OR DISTRIBUTION.

So far as the mode or manner of appropriating or otherwise acquiring the right to divert and use water is concerned, there is no material difference between an appropriation for private use and one for sale, rental or distribution to the public, except that as a corporation is acting for the public, it may condemn the right to divert water for such purpose.

There are two most important questions growing out of the appropriation of water for public use, viz., what interest or ownership has the corporation in the water appropriated for sale, rental or distribution to others, before and after it has supplied the water appropriated to its consumers, and what compensation is it entitled to receive for the right to the preferred use of the water and for the water supplied. The State has, by its constitution and statutes, imposed certain limitations and restrictions upon corporations appropriating water for the public use both as to the character and extent of its ownership in and right to deal with the water and the compensation it shall receive for the water it supplies to others.

Various statutes have been enacted with a view of authorizing corporations to appropriate water for distribution to the public and at the same time preserve in the State the right and power to regulate and control the exercise of such right.

Stat. 1852, p. 171;
Stat. 1858, p. 218;
Stat. 1862, p. 540;
Stat. 1880, p. 59.
Stat. 1885, p. 95.

Some of these statutes do not call for any extended notice, as they have been superseded by later ones.

But the statute of 1858 provided for the fixing of rates to be charged by water companies by commissioners. The provisions of this act related to water supplied to any city *and* county or city or town, and not to counties. Section 4 is as follows:—

"All corporations formed under the provisions of this act, or claiming any of the privileges of the same, shall furnish pure fresh water to the inhabitants of such city and county, or city or town, for family uses, so long as the supply

permits, at reasonable rates and without distinction of persons, upon proper demand therefor, and shall furnish water, to the extent of their means, to such city and county, or city, or town, in case of fire or other great necessity, free of charge. And the rates to be charged for water shall be determined by a board of commissioners, to be selected as follows: Two by such city and county, or city or town authorities, and two by the water company; and in case that four cannot agree to the valuation, then, in that case, the four shall choose a fifth person, and he shall become a member of said board; if the four commissioners cannot agree upon a fifth, then the sheriff of the county shall appoint such fifth person, the decision of a majority of said board shall determine the rates to be charged for water for one year, and until new rates shall be established. The board of supervisors, or the proper city or town authorities, may prescribe such other proper rules relating to the delivery of water, not inconsistent with this act, and the laws and constitution of this State."

Stat. 1858, p. 219, Sec. 4.

The statute of 1862 related to water furnished in counties outside of cities and towns and provided:

"Every company organized as aforesaid shall have power, and the same is hereby granted, to make rules and regulations for the management and preservation of their works, not inconsistent with the laws of this State, and for the use and distribution of the waters and the navigation of the canals, and to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the board of supervisors of the county or counties in which the work is situated, but which shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent. per month upon the capital actually invested."

Stat. 1862, pp. 540, 541, Sec. 3.

In 1879, our present constitution was adopted, and went into effect January 1, 1880. Article XIV of the constitution is as follows:—

"*USE AND RATES.*

"Section 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; provided, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year, and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water-rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water-rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation to the city and county, or city or town where the same are collected, for the public use.

"*RIGHT TO COLLECT WATER RATES A FRANCHISE.*

"Sec. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

Const. Cal., Art. XIV, Secs. 1 and 2.

The Spring Valley Water Works was organized to supply water to the city and county of San Francisco, under the act of 1858. When the new constitution took effect, the supervisors of San Francisco asserted the right to fix rates for that company as provided in the constitution. The Company, on the other hand, maintained that having been organized under this act providing for the fixing of rates as therein specified, giving the company the right to select two of the commissioners, it became vested with the right to have the rates so fixed, and the constitution of this State providing for the establishment of rates in a different way and by a different body, was in violation of the Constitution of the United States. But in the case of the Spring Valley Water Works v. Schottler, 110 U. S., 47, the Supreme Court of the United States held that the change in the mode of fixing the rates was within the power of the State, as against a corporation organized under the act of 1858, and that it violated no provision of the Constitution of the United States.

Spring Valley Water Works v. Board of Supervisors, 61 Cal., 3, is to the same effect.

And it has been held, uniformly, by the Federal and State courts, that this power of regulation of rates and compensation exists in the State, and that the only power of the courts, in dealing with the action of a legislative or other body, establishing rates to be charged, is to inquire whether the rates are fairly fixed upon proper investigation, and to set them aside if it shall appear that they are so unreasonable as to make their enforcement equivalent to the taking of property for public use without just compensation.

Munn v. Illinois, 94 U. S., 113;
Spring Valley Water Works v. Schottler, 110 U. S., 347;
Spring Valley Water Works v. San Francisco, 82 Cal., 286;
Stone v. Farmers' Loan and Trust Co., 116 U. S., 307;
Dow v. Beidelman, 125 U. S., 680;
Georgia Banking Co. v. Smith, 128 U. S., 174;
Chicago & N. W. Ry. Co. v. Dey, 35 Fed. Rep., 866;
San Diego Land and Town Co. v. National City, 74 Fed. Rep., 79;
San Diego Land and Town Co. v. National City, 174 U. S., 739.
Smyth v. Ames, 169 U. S., 466;
San Diego Water Co. v. City of San Diego, 118 Cal., 556.

As it is firmly established that the State possesses the power of regulation and that the courts can only interfere to prevent the enforcement of unreasonable rates, it is necessary to inquire what will be regarded as

reasonable rates, and what shall be taken into account in an effort to determine what is just compensation. In considering this question, the fixing of rates by city and town authorities must be distinguished from the fixing of rates outside of cities and towns by boards of supervisors. In the latter case, the question of water rights and the effect of the acquisition thereof by a property-owner from the company is involved, and will be considered.

1. *Fixing of Rates in Cities and Towns.*

It will be noticed from the provisions above quoted that the use of all water appropriated or to be appropriated for sale, rental and distribution is declared to be a public use, and the rates are required to be fixed, annually, by the city or town authorities, and that any company collecting water rates otherwise than as so established shall forfeit its franchises and water works to the city and county or city or town for the public use.

Const. California, Art. XIV.

The constitution contains no limitation of the power of the city or town authorities; no provision as to what shall constitute reasonable rates or basis upon which rates shall be established. No appeal is given to any other court or body. So far as its own provisions are concerned, the power of the bodies to whom this important jurisdiction over the property of water companies is given is wholly arbitrary and unlimited, and the company is bound by any rates such bodies may establish, under penalty of the forfeiture of all of its property, if it shall charge a higher rate than the one so established. The constitution is an unreasonable and vicious one in that it vests in the purchaser of the water from the company the power to fix his own price upon it and compels the company to furnish the water at the price thus fixed on penalty of forfeiture of its plant. The constitution has thus been made the means of great wrong and injustice without the possibility of relief by fair and legitimate means, capital invested in the development of water for public use has been sacrificed, and the further investment of capital for this purpose has been effectually and forever suppressed so long as the laws now in force, construed as they are by the courts, are allowed to exist. And they are not likely to be materially changed in the near future.

As against the natural, the inevitable tendency of the bodies authorized to fix rates to act in the interest of themselves and other consumers, the courts have asserted jurisdiction only to the extent of inquiring whether rates established are so unreasonable as to amount to the taking of property without just compensation, in violation of the Constitution of the United States. And even this power in the courts was practically denied by the Supreme Court of the United States in the beginning of judicial controversy on the subject.

In Munn v. Illinois, 94 U. S. 113, it is said:

> "It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.
>
> "As has already been shown, the practice has been otherwise. In countries

> where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied. In fact, the common-law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use. . . .
>
> "We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts."

Munn v. Illinois, 94 U. S., 113, 133.

See also Peik v. Chicago &c. Railway Co., 94 U. S., 164, 178.

This was equivalent to saying that the power to say what were reasonable rates rested exclusively with the legislature, and that the courts had no power to interfere. But the court rendering this decision, and others rendered about the same time, and known as the Granger cases, has not adhered to it, but has, without overruling it in terms, so changed and modified the rule laid down as to amount to the same thing. One step in that direction was to hold that if rates were made so low as not to return *some* compensation over and above interest on bonds and operating expenses, they were void as amounting to the taking of property without just compensation.

So it was said in Spring Valley Water Works v. Schottler, 110 U. S., 354:

> "Like every other tribunal established by the legislature for such a purpose, *their duties are judicial in their nature*, and they are bound in morals and in law to exercise an honest judgment as to all matters submitted for their official determination."

Again, in Railway Co. v. Minnesota, 134 U. S., 118, the court held a statute of Minnesota void because, as construed by the highest court of that state, it made the action of a commission fixing rates conclusive and not open to judicial inquiry as to the reasonableness of such rates. The court said (P. 466):—

> "This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation, judicially, of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission, which, in view of the powers conceded to it by the State court, cannot be regarded as clothed with judicial functions, or possessing the machinery of a court of justice."

And in later cases the court has entirely abandoned the rigid rule first declared that the action of the legislature was conclusive, and firmly established the better and more reasonable doctrine that the courts may inquire into the reasonableness of the rates by whomsoever they may be established, and if found to be unreasonable, prevent their enforcement.

Spring Valley Water Works v. Schottler, 110 U. S., 347;
Stone v. Farmers' Loan and Trust Co., 116 U. S., 307;
Georgia Banking Co. v. Smith, 128 U. S., 174;
Budd v. People, 143 U. S., 517;
Reagan v. Farmers' Loan and Trust Co., 154 U. S., 399;
Smyth v. Ames, 169 U. S., 544;
San Diego Land and Town Co. v. National City, 174 U. S., 739.

The latest declaration of the Supreme Court of the United States as to the respective powers of the legislative and judicial departments of government, in the establishment, determination and enforcement of rates, is found in San Diego Land and Town Co. v. National City, 174 U. S., 739, 753. The court says in that case:

> "That it was competent for the State of California to declare that the use of all water appropriated for sale, rental, or distribution should be a public use and subject to public regulation and control, and that it could confer upon the proper municipal corporation power to fix the rates or compensation to be collected for the use of water supplied to any city, county, or town or to the inhabitants thereof, is not disputed, and is not, as we think, to be doubted. It is equally clear that this power could not be exercised arbitrarily and without reference to what was just and reasonable as between the public and those who appropriated water and supplied it for general use; for the State cannot by any of its agencies, legislative, executive, or judicial, withhold from the owners of private property just compensation for its use. That would be a deprivaton of property without due process of law. Chicago, Burlington & Q. Railroad Co. v. Chicago, 166 U. S., 226; Smyth v. Ames, 169 U. S., 466, 524. But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for public use. Chicago & Grand Trunk Railway Co. v. Wellman, 143 U. S. 339, 344; Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362, 399; Smyth v. Ames, above cited. See also Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 614, 615 (*ante*, 823, 831)."

If we turn to the decided cases in our own State, we find that from the beginning, the Supreme Court of this State has upheld the right and power of the legislature, or other official bodies vested by it, or authorized to act, to establish and enforce rates to be charged for water supplied, but that the court has, at the same time, declared and upheld the jurisdiction of the courts of the State to inquire into the reasonableness of such rates and to declare them void and prevent their enforcement if found to be unreasonable.

Spring Valley Water Works v. San Francisco, 82 Cal., 286;
Jacobs v. Board of Supervisors, 100 Cal., 121;
San Diego Water Co. v. City of San Diego, 118 Cal., 556;
Redlands, Lugonia &c. Water Co. v. City of Redlands, 121 Cal., 365;
Redlands, Lugonia &c. Water Co. v. City of Redlands, 121 Cal., 312.

The doctrine that the legislative power to fix rates was beyond judicial inquiry, at first declared by the Supreme Court of the United States, and afterwards abandoned, was never recognized by the Supreme Court of California. It was declared in the case first above cited, that:—

> "When the constitution provides for the fixing of rates or compensation, it means *reasonable* rates and *just* compensation. To fix *such* rates and compensation is the duty and within the jurisdiction of the board. To fix rates not reasonable or compensation not just is a plain violation of its duty."

So we may regard it as firmly and finally settled, in this State, that when the common council or other governing body of a city or town, or the board of supervisors of a city have established rates, the courts may inquire whether such rates are reasonable or not, and if found to be unreasonable, declare them void and enjoin their enforcement.

But this has only brought us to the more difficult question: what are such unreasonable rates as will authorize the interference of the courts, and what shall be taken into account in attempting to determine whether rates established in a given case are reasonable or unreasonable. This would seem to be an easy enough question. But the courts have made it anything but easy by their many conflicting decisions. It is easy enough to ascertain what amount a company has expended for the public use and benefit in the construction of its plant. It ought not to be difficult to ascertain what its operating expenses are, with reasonable certainty. The extent of its loss by wear and tear of its plant ought to be arrived at closely enough to avoid any great injustice to the company or its consumers. It ought not to be difficult to arrive at the revenues derived from rates established and collected for previous years as a guide in fixing present rates. In order that the proper basis should be had and information supplied for use in fixing rates, an act was passed by the legislature authorizing and requiring the board of supervisors of any city and county or other governing body, to require by ordinance or otherwise, any corporation, company or person supplying water, to furnish, in the month of January in each year, a detailed statement, verified by the oath of the president and secretary of the corporation or company, or of such person, "showing the name of each water-rate payer, his or her place of residence, and the amount paid for water by each of such water-rate payers during the year preceding the date of such statement, and also showing all revenues derived from all sources, and an itemized statement of expenditures made for supplying water during said time," also a sworn "detailed statement showing the amount of money actually expended annually, since commencing business, in the purchase, construction and maintenance, respectively, of the property

necessary to the carrying on of its business, and also the gross cash receipts annually for the same period from all sources."

Stat. 1881, p. 54.

This statute was evidently intended to call for the information necessary to form a proper basis for fixing the rates. It is perfectly apparent that it was intended that the *cost* of the plant, or the money expended in its construction, and the operating expenses, should form the basis of any rates to be established. But it is believed that in the decided cases in this State this evident intention of the legislature as indicated by the statute quoted from has been overlooked or disregarded. In the early case of Spring Valley Water Works v. San Francisco, 82 Cal., 286, the question as to what should be considered in an effort to ascertain what are reasonable rates was not decided. It was held generally, however, that:

> "The courts cannot, after the board has fully and fairly investigated and acted, by fixing what it believes to be reasonable rates, step in and say its action shall be set aside and nullified, because the courts, upon a similar investigation, have come to a different conclusion as to the reasonableness of the rates fixed. There must be actual fraud in fixing the rates, or they must be so palpably and grossly unreasonable and unjust as to amount to the same thing." (P. 306.)

The question came before the court again in San Diego Water Co. v. City of San Diego, 118 Cal., 556, where an attempt was made to lay down some rule by which it should be determined whether rates were or were not reasonable. The court was hopelessly divided on the subject. The opinion of three of the Justices, Van Fleet, Henshaw and McFarland, held in an opinion written by the former, that the money reasonably and properly expended by the company in acquiring and constructing its works should be taken as the basis in fixing rates, and a reasonable compensation for such expenditures should be provided. In the course of the opinion referred to, it is said:

> "What that standard is, as applied to the present case, we think not difficult of ascertainment. As we have said, it is not the water or the distributing works which the compauy may be said to own, and the value of which is to be ascertained. They were acquired and contributed for the use of the public; the public may be said to be the real owner, and the company only the agent of the public to administer their use. What the company has parted with, what the public has acquired, is the money reasonably and properly expended by the company in acquiring its property and constructing its works. The State has taken the use of that money, and it is for that use that it must provide just compensation. What revenue money is capable of producing is a question of fact, and, theoretically at least, susceptible of more or less exact ascertainment. Regard must be had to the nature of the investment, the risk attendant upon it, and the public demand for the product of the enterprise. It would not, of course, be reasonable to allow the company a profit equal to the greatest rate of interest realized upon any kind of investment, nor, on the other hand, to compel it to accept the lowest rate of remuneration which capital ever obtains. Comparison must be made between this business and other kinds of business involving a similar degree of risk, and all the surrounding circumstances must be considered. An important circumstance will always be the rate of interest at which money can be borrowed for investment in such a business; and, where the business

> appears to be honestly and prudently conducted, the rate which the company would be compelled to pay for borrowed money will furnish a safe, though not always conclusive criterion of the rate of profit which will be deemed reasonable. In ordinary cases, where the management is fair and economical, it would be unreasonable to fix the rates so low as to prevent the company from paying interest on borrowed money at the lowest market rate obtainable; and even then, some allowance or margin should be made for any risk to which the company may be exposed, over and above the risk taken by a lender. . . .
>
> "But it is contended that the power of the court is at most to inquire whether some reward will be provided by the rates fixed and that if some reward, however small, is so provided, the court cannot interfere. We have been referred to *dicta* in some of the cases which do support that contention; but we are unable to agree with that conclusion. It is an elementary doctrine of constitutional law that the question of just compensation is a judicial question to be determined in the ordinary course of judicial proceedings; and, construing article XIV of our constitution with section 14 of article I (as we think we are bound to do), we find no difficulty in holding that whenever the rates fixed by the council are grossly and palpably insufficient to furnish such a revenue as will afford just compensation within the rules above declared, redress may be had in the courts."

From this it was reasonable to hope that some measure of justice would eventually be dealt out to corporations and others supplying water to the public. In the same case, in a dissenting opinion of the Chief Justice, it was said (p. 588):

> "I think the judgment and order appealed from should be affirmed. In fixing water rates, it is the duty of the city council to provide for a just and reasonable compensation to the water company. Anything short of that is simple confiscation, and is not only a violation of constitutional rights, but is an extremely short-sighted policy. Rates ought to be adjusted to the value of the service rendered, and that means that the water companies should be allowed to collect annually a gross income sufficient to pay current expenses, maintain the necessary plant in a state of efficiency, and declare a dividend to stockholders equal to at least the lowest current rates of interest, not on the par or market value of the stock, but on the actual value of the property necessarily used in providing and distributing the water to consumers.
>
> To arrive at the actual value of the plant, water rights, real estate, etc., cost is an element to be considered, but it is not conclusive. The plant may have cost too much, it may have been planned upon too liberal a scale, its construction may have been extravagantly managed, the real estate and water rights may have cost less or more than their present value, and, therefore, cost will seldom represent the actual capital at present invested in the works, but such present value is the true basis upon which compensation, in the shape of dividends, is to be allowed.
>
> As to current expenses, all operating expenses reasonably and properly incurred should be allowed, taxes should be allowed, and the cost of current repairs.
>
> In addition to this, if there is any part of the plant, such as main pipes, etc., which at the end of a term of years—twenty years, for instance—will be so decayed and worn out as to require restoration, an annual allowance should be made for a sinking fund sufficient to replace such part of the plant when it is worn out."

This was arriving at practically the same result as would have been reached by the basis fixed by the other three Justices. In arriving at the compensation that should properly be allowed, the Chief Justice takes the

present value as the basis of compensation, instead of the *original cost*, as in the other opinion. But he holds that in addition to a reasonable return on the present value, the company should be allowed sufficient revenue to make good the decay or depreciation of the perishable portion of the plant, and above this and expenses of operation and repairs, dividends to the stockholders of not less than the current rate of interest should be provided by the rates. Either of the modes laid down in the two opinions cited would lead to fair and just results, both to water companies and consumers. The allowance for depreciation by the Chief Justice in connection with the basis of an allowance on the present value is, perhaps, nearer a fair and equitable solution of this vexed question than any other. But its weakness consists in the fact that it is utterly impossible to arrive, at any given time, at the present value of the plant. Most of it is under ground, and its condition must be a matter of mere conjecture or opinion. On the other hand, the actual cost of the plant, and what should reasonably have been expended in its construction, should be easy to ascertain. And, of course, the *actual* cost should never be allowed for where it is shown that such cost was extravagant or unnecessary. But whatever amount a company has reasonably and necessarily expended in supplying water to its consumers, is so much expended for their use and benefit, and on that amount they should be required to pay a reasonable rate of interest by the rates established.

But there were other opinions delivered in the case under consideration. Mr. Justice Garoutte took the ground, once declared in some of the decisions of the Federal courts, but long since abandoned, that if *some* revenue can be derived by the company from the rates, however small, the courts cannot interfere. He says (p. 581):

> "Taking the findings of fact as they stand, the schedule of rates fixed by the city should not be disturbed. The valuation of the plant is $750,000; the operating and current expenses are $40,000. The revenue from the sale of water under the schedule of rates would be and actually was $65,000. This leaves a profit of $25,000 upon the investment. *To be sure it is small, when we consider the amount of money invested. To be sure it is not enough, and possibly not one-half the sum that could be earned if that amount of money was invested in other business undertakings, but with these things we have nothing to do.* Those are matters passed upon by the city in the exercise of a discretion granted by the constitution, and its decision as to the reasonableness of the amount of revenue to be derived by the company from the rates is conclusive upon the courts. While this sum is not enough upon this character of investment, still it is three and one-half per cent, and such return is a substantial profit. We mean it is so substantial that a court of equity in view of the law of the land, cannot say that the rates are so unreasonable as to be confiscatory in character, and thus violate any principle of constitutional law."

Thus it is conceded by the Justice writing this opinion that the rates in question are unreasonable. But, while asserting in the opinion that reasonable rates must be allowed, and that the courts have the power to interfere and prevent the enforcement of unreasonable rates, he holds, nevertheless,

that *these* unreasonable rates, held to be so by him, cannot be set aside. But to make it still worse, the court below had found, as one of the facts in the case, that the depreciation of the plant of the company amounted to three and one-half per cent. per annum, the full amount the rates would return, as held by him, and he concluded that no allowance could be made for this loss. And further, the court found that the plant was constructed on borrowed capital, on which the company was paying *five* per cent. interest. But in the estimation of the writer of the opinion, this was wholly immaterial, although it showed that as the rates yielded only *three and a half per cent.*, the company must necessarily lose one and a half per cent. per annum.

Such a construction of the laws of the State and the rights of those who have invested their money in enterprises looking to the development and supply of water does not tend to encourage such enterprises or impress a candid mind with the justice of such laws.

But there were still other opinions delivered in this same case. Mr. Justice Temple takes the ground that there is "no obligation to remunerate water companies for investments made or to allow interest thereon, either upon first cost or present value," and that as to the cost of bringing water into the city and distributing it, "these matters are merely incidental, and never determinative," and he "agrees, generally, in the views expressed in the opinion of Justice Garoutte," and concludes by saying:

> "The only proper judicial question is whether *compensating* rates have been fixed. *Whether they are too high or too low is not a judicial question.* The judge cannot substitute his judgment for that of the body to whom the discretion is given by the constitution."

By "compensating rates," is meant, it is supposed, such rates as will return the company *something* over and above operating expenses, no matter how little.

Mr. Justice Harrison, in another separate opinion, holds that the present value, and not the cost of the plant, must be taken as the basis of fixing the rates, but holds further that the courts have no power to inquire into the reasonableness of the rates, saying:

> "In designating the city council as the body to fix these rates the constitution has clearly indicated that they are not to be fixed by the courts. The water company has the right to protection by the judiciary from the enforcement of such rates as will deprive it of compensation for furnishing the water; but if the rates fixed by the council afford compensation to the water company, the question of the reasonableness of this compensation is a question of fact which is not open to review by the courts. If the courts are authorized to determine the amount of compensation which will be reasonable, the rates will be fixed by them, rather than by the city council; and, for the same reason, the city council, and not the courts, are authorized to determine whether the rates, to be reasonable, shall be fixed at such amount as will yield to the water company any definite rate of interest."

This is the most radical ground taken by any of the Justices. Since the Supreme Court of the United States has unequivocally abandoned this same

doctrine, laid down in Munn v. Illinois, and the other Granger cases, this conclusion of Justice Harrison has no support in authority, and it would be difficult to find any support for it it reason or justice. The conclusion is a purely arbitrary one, and cannot but be harmful because of its injustice.

It may be said that out of the diversity of opinions exhibited in this case, no definite results can be extracted further than that a majority of the court, while disagreeing as to the manner of reaching proper results, did announce a reasonable and just conclusion as to the rights of water companies and their consumers. But this rational and just position, taken by the majority of the court, has not borne fruit in later decisions of the court, unfortunately. In the case of Redlands, Lugonia &c. Water Co. v. Redlands, 121 Cal., 312, the opinion was written by Mr. Justice Harrison, who had taken such radical ground in the San Diego case, and concurred in by Justice Garoutte, who had taken like ground in the former case. Justice Van Fleet concurred in the judgment only. It is said in the opinion that it was held in the San Diego case that the interest on the indebtedness of the company is not a proper item of expenditure to be provided in fixing the rates, and that the company was not entitled to have rates so fixed as to enable it to set apart a certain amount each year for the depreciation of its plant, and as the judgment of the court below allowed these amounts, it was reversed on the ground that it was inconsistent with the San Diego case.

It will be seen from the review of the opinions in the San Diego case, above, that it amounted to nothing more than a reversal of the case without actually determining any principle of law. The case was reversed solely because two certain findings of the court below were held not to be sustained by the evidence. And this later case, not being concurred in, so far as its reasoning is concerned, by all of the Judges, and being in department, decides nothing except that the case be reversed. But there is still another case between the same parties, reported in 121 Cal., 365, and decided in banc. In this case, also, Justice Harrison again wrote the opinion. The opinion was concurred in by Justices Garoutte, Temple and Henshaw, and Justice Van Fleet again concurred in the judgment only. Chief Justice Beatty and Justice McFarland did not participate in the decision. The court declares that certain things were decided in the San Diego case and reaffirms the rule laid down by Justice Harrison in Redlands &c. Water Co. v. Redlands, decided two days earlier, that the present value of the plant must be taken as the basis of fixing rates and that provision for payment of interest on the bonded indebtedness of the company was not necessary, and fortifies this position by citing Smyth v. Ames, 169 U. S., 466. This case, like the other, is decided on an entirely different ground, viz., that there was no proof of the value of the plant, and as that was an essential element in determining whether the rates were reasonable or not, the decision of the court below that the rates were reasonable must be affirmed.

But, taking all of the decisions together, it may be safely said to be the judgment of the Supreme Court of this State that in fixing rates the bonded indebtedness, or the amount of interest paid upon it, is immaterial, and that the present value of the plant, and not its cost, must be taken as the basis of fixing the rates. Whether the depreciation of the plant should be considered and made good by the rates has not been decided. It is claimed that depreciation is made good by an allowance for repairs. If it were true that the loss by depreciation could be met in the way indicated, the position taken would be unassailable. But it is far from being true. Repairs, in the proper sense, are the ordinary patching of pipes where leaks occur, and the replacement of a piece of pipe here and there, as defects are found or breaks occur, and work of a similar kind, each year. But while these repairs are going on, the whole plant is slowly but surely going to decay, and sooner or later, whole pipe lines, and eventually the whole distributing system, must be replaced. Unless this loss is made good by rates allowed, the company must eventually lose its plant. In the case of San Diego Water Co. v. San Diego, reviewed above, it was proved and found by the court that the depreciation amounted to three and a half per cent. per annum. The case was reversed, and retried by another judge, and the same finding was made. This is a heavy loss that, under the decisions of the Supreme Court, would amount to the full sum held by the court to be reasonable compensation to the company. There can be no doubt whatever that if the Supreme Court of this State adheres to the narrow and unjust construction of our irrigation laws found in the cases already cited, it means the final financial ruin of all companies supplying water under such laws, unless the members of the bodies to whom the important duty of fixing such rates, realize the folly of establishing such rates as must destroy the companies or individuals that have already invested their money in such enterprises and prevent all further investments.

There is one other unjust feature of the law relating to the fixing of rates in cities and towns. The law provides that such rates must be fixed every year. If an ordinance fixing confiscatory rates is adopted, the suffering company has no remedy but to go into the courts. It cannot by any possibility reach a final decision in the Supreme Court before the ordinance ceases to exist, and another, it may be equally obnoxious, is adopted. The San Diego case has been in court now nearly ten years, and the ordinance assailed in that case expired years ago. Therefore, if the company finally establishes the fact that the rates were unreasonable and unjust, as two Judges of the Superior Court have decided, it will be unable, under existing laws, to obtain any relief. It was bound, on penalty of forfeiture of its plant, to furnish the water at the unjust rate imposed upon it. There should be some provision by which, after rates have been declared void, new and just rates shall be fixed at the end of the litigation for the year covered by the ordinance, and then enforced.

But the question of the reasonableness of rates is not a State, but a Federal

question. If we look to the decisions of the Federal courts, we find them differing widely from the decisions of the Supreme Court of this State. Most of the cases affecting the question of rates relate to rates of railroad companies. To review all of the cases on this important question would extend this paper unnecessarily. Therefore, only a few of the very latest cases bearing on this question will be noticed. The question was before Judge Ross, of the Circuit Court of the United States, in San Diego Land and Town Co. v. National City, 74 Fed Rep., 79. In this case it was held that the present value of the plant should be taken as the basis of fixing rates, but that due regard should be given to the rights of the public and to the cost of maintenance of the plant and its depreciation by reason of wear and tear. The court said:

> "It is obvious, I think, that it must be held, either that the right of judicial interference exists only when the schedule of rates established will fail to secure the owners of the property *some* compensation or income from their investment (however small), or else that the court must adjudicate, when properly called upon to do so, whether the rates established by the municipal authorities are so manifestly unreasonable as to amount to the taking of property for public use without just compensation. Undoubtedly, every intendment is in favor of the rates as established by the municipal authorities. But as it is firmly established that it is within the scope of the judicial power, and a part of the judicial duty, to inquire whether rates so established operate to deprive the owner of his property without just compensation, it seems to me that it logically follows, that if the court finds from the evidence produced that they are manifestly unreasonable, it is its duty to so adjudge, and to annul them; for it is plain that if they are manifestly unreasonable, they cannot be just. In the solution of that problem many considerations may enter; among them, the amount of money actually invested. But that is by no means, of itself, controlling, even where the property was at the time fairly worth what it cost. If it has since enhanced in value, those who invested their money in it, like others who invest their money in any other kind of property, are justly entitled to the benefit of the increased value. If, on the other hand, the property has decreased in value, it is but right that those who invested their money in it, and took the chances of an increase in value, should bear the burden of the decrease. In my judgment, it is the actual value of the property at the time the rates are to be fixed that should form the basis upon which to compute just rates; having, at the same time, due regard to the rights of the public, and to the cost of maintenance of the plant, and its depreciation by reason of wear and tear."

It was further held in this case that the fact that the company had borrowed money and was paying interest on it was immaterial. On this point, it was said:

> "Nor can it make any difference that the complainant, in the construction of its plant and the carrying on of its work, borrowed $300,000 on which it pays interest, and for which, it may be, it issued its bonds. The buyer of such bonds, like the loaner of money on a mortgage upon real estate, does so with his eyes open. The loaner of money on a mortgage knows that conditions may be such as to increase the value of his security, or they may be such as to decrease its value. He takes the chances that everybody must take who engages in business transactions. The buyer of bonds issued by a water company such as the complainant has the like knowledge, and the further knowledge that the law, which everyone is presumed to know, prescribes that the rates to be charged for the

> water furnished by the company shall be established and fixed by a special tribunal, subject, as all State laws are, to the paramount provisions of the constitution of the United States, among which is one which secures such investors against the fixing of such rates as will operate to deprive him of his property without just compensation."

Thus it will be seen that the Circuit Court disagreed with the Justices of the State court in holding that the court had power to inquire and determine whether the rates in question were *reasonable* or not, and that the depreciation of the plant from wear and tear should be considered. This case went to the Supreme Court of the United States on appeal. That court in San Diego Land and Town Co. v. National City, 174 U. S., 739, laid down the following rules for the determination of the question whether rates are reasonable or not:

> "The contention of the appellant in the present case is that in ascertaining what are just rates the court should take into consideration the cost of its plant, the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying water to consumers, either by way of interest on the money it has expended for the public use, or upon some other fair and equitable basis. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as under all the circumstances will be just to the company and to the public. The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. The property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant may be in excess of the real value of the property. So that it cannot be said that the amount of such bonds should in every case control the question of rates, although it may be an element in the inquiry as to what is, all the circumstances considered, just both to the company and to the public."

Here it is distinctly held that the cost of the plant, the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary to be used in constructing the plant, the annual depreciation of the plant from natural causes resulting from its use, the real value of the plant, and the fair value in themselves of the services rendered, should all be taken into account, and a fair return allowed upon the reasonable value of the plant at the time it is being used for the public use. This basis of fixing rates is fair and just, and if fairly lived up to in practice, no injustice could result. But it embodies two elements of uncertainty. Who can arrive, with any degree of certainty, at the present value of a water plant, the greater part of which is underground, and its actual condition beyond ascertainment, and who can arrive at the value of the services to the public? It has never yet been attempted and probably never will be. The only way in which a proper basis can be arrived at is to take the reasonable cost of the plant, which can be easily arrived at. If the construction has been extravagant or unneces-

sarily expensive, the actual cost should not be allowed for, as is said in the last case cited. And this case may reasonably be construed to mean just this. The reasons given for holding that the actual cost, or the outstanding bonds, should not control in all cases, are that "the property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant, may be in excess of the real value of the property."

It must be inferred from this that if the property did not cost more than it ought to have cost and the bonds issued were not excessive, the company should have a reasonable return on the cost, sufficient at least to pay the interest on its bonds, and a fair profit to the company in addition, provided the rates necessary to furnish such return would not be unreasonable or oppressive to the public or the consumers taking water from the company. As to what would be the fair value of the services to the public, no rule can be laid down. It might appear that in order to allow the company the interest on its bonds and a fair profit to the stockholders, the rates must necessarily be oppressive. If so, under this decision, which must be taken as finally establishing the law on the subject, the rates could not be upheld. But certainly this element of value of the service to the public is a most uncertain one.

As to the interest on the bonds, as shown above, Judge Ross held, in effect, that the bondholders must take their chances on the rise or fall in the value of the property mortgaged. But nevertheless, their right to receive their interest from rates established cannot be overlooked or disregarded. The constitution of the State guarantees that reasonable rates and just compensation shall be allowed. Judge Ross says, in the course of his opinion, that the buyer of bonds takes with knowledge of the laws providing for the fixing of rates, "subject to the paramount provisions of the Constitution of the United States, *among which is one which secures such investors against the fixing of such rates as will operate to deprive him of his property without just compensation.*"

Therefore the bondholders have an interest in the establishment of just rates that they may protect. Consequently, it is held that a trustee of the bondholders may maintain suit to declare void rates that are unreasonable and will not secure the payment of their interest.

Mercantile Trust Co. v. Texas & Pacific Ry. Co., 51 Fed Rep., 529;
Reagan v. Farmers' Loan and Trust Co., 154 U. S., 362;
Consolidated Water Co. v. City of San Diego, 84 Fed. Rep., 369;
Benson v. City of San Diego, 100 Fed. Rep., 158.

It follows that the question of the amount of the bonded indebtedness is not immaterial, as held by the State Supreme Court, but is an element, as directly held by the Supreme Court of the United States, to be taken into account in fixing the rates.

In fixing rates, the board of supervisors of a city and county or governing body of a city or town, acts independently of the mayor, and he has no power to veto an ordinance fixing rates.

Jacobs v. Board of Supervisors, 100 Cal., 121.

The distinction between water appropriated for sale, rental, or distribution, and that appropriated for private use, should be remembered in this connection. Water may be appropriated for the private use of any number of persons. And a corporation may appropriate it for the use of its stockholders. It is only where the water is appropriated for sale, rental, or distribution that it is made a public use and within the provisions of the constitution.

McFadden v. Board of Supervisors, 74 Cal., 571.

And in this connection attention should be called to the case of Merrill v. South Side Irrigation Co., 112 Cal., 426. This case gives a perverted meaning to the word "appropriated," that is unfortunate. The word as applied to the acquisition and use of water has a technical and well understood meaning, or had until this case was decided. It included whatever was necessary to the diversion of running water and the application of it to such beneficial use as would entitle the appropriator to its continued use. In this case, the court construed it to include the application of the water to the use mentioned in the constitution. The court says:

> "Appellant contends that the word 'appropriated,' as used in the section of the constitution quoted above, only applies to water appropriated from streams upon the public lands, and has no application to water acquired by other means than an appropriation under the Civil Code.
>
> This construction is too narrow, and, we think, does violence to the evident intent of the framers of the constitution.
>
> There is no doubt but that in a broad sense to *appropriate* is to make one's own, to make it a subject of property, and it is often used in the sense of denoting the acquisition of property, and a right of exclusive enjoyment in those things which before were without an owner, or were *publici juris*.
>
> But it is also used in the sense of prescribing property or money to a particular use, as to appropriate money to a designated purpose; to appropriate land to grazing, or fruit, or other purpose. It is also used in the sense of 'to distribute.' (Anderson's Law Dictionary.)
>
> When water is designated, set apart, and devoted to purposes of sale, rental, or distribution, it is *appropriated* to those uses, or some of them, and becomes subject to *the public use* declared by the constitution, without reference to the mode of its acquisition."

The constitution says water "appropriated *for* sale, rental, or distribution." The court holds that it means "appropriated *to* sale, rental or distribution." It was a stretching and distortion of the meaning of the word for the laudable purpose of preventing monopolies, but this sort of confusion is to be regretted, nevertheless.

FIXING OF RATES BY BOARDS OF SUPERVISORS FOR WATER SUPPLIED OUTSIDE OF CITIES AND TOWNS.

There are some quite material differences between the establishment of rates in cities and towns and in counties outside of such cities and towns. In cities and towns, the rates must, by the terms of the constitution, be fixed annually. In the outside territory this is not necessary. As we shall see

further along, until the board of supervisors establishes the rates, the company furnishing the water may fix and change its own rates. If the board of supervisors once establishes the rates, they must stand for not less than one year, when they may be changed or abrogated. In cities and towns, there is no amount fixed by law that must be returned by the rates. In counties the statute provides that the rates must be so fixed as to return not less than six nor more than eighteen per cent. per annum on the value of the plant. In establishing purely domestic rates in cities and towns, the question of water rights and the effect upon the rates to be paid for the acquisition of a water right by a consumer from the company, or the nature and general effect of such water rights, does not arise. But in fixing rates for irrigation, these questions have given rise to much controversy and contrariety of opinion. Attention will first be given to the question of fixing rates, after which the question of water rights, the power of the company to sell them, and the further question whether the price for a water right or the annual rates to be paid for the water can be fixed or controlled by the contract of the company and its consumers.

(*a*) *Of the Fixing of Rates.*

Much that has been said as to the fixing of rates by city and town authorities is applicable, also, to the fixing of rates for the county by the board of supervisors. The constitution, Article XIV, is applicable in both cases, but in a different way. In case of cities and towns, as we have seen, the constitution itself requires that the rates shall be fixed in February of each year. So far as it applies to the fixing of rates, Section 2 of the article of the constitution is alone applicable to rates to be fixed in counties. That section provides:

> "The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, *is a franchise*, and cannot be exercised except *by authority of and in the manner prescribed by law.*"

Const. Cal., Art. XIV, Sec. 2.

Prior to the adoption of the constitution, the statute of 1862, above referred to, had been enacted providing for the fixing of the rates by the companies furnishing the water, but subject to regulation by boards of supervisors and providing that the rates should not be reduced "so low as to yield to the stockholders less than one and one-half per cent. per month *upon the capital actually invested.*"

Stat. 1862, p. 541, Sec. 3.

Later, the Civil Code was enacted. One of its sections provides that where water is furnished by a corporation to irrigate lands the right to the flow and use of the water shall remain a perpetual easement to the land *"at such rates and terms as may be established by said corporation in pursuance of law.'*

Civil Code, Sec. 552.

Here again the right to fix the rates was vested in the corporation furnishing the water. Subsequently, in 1885, a statute was enacted providing for the fixing of rates by boards of supervisors and establishing a course of procedure.

Stat. 1885, p. 95.

Section 1 of this Act provides that the use of water is a public use, and the right to collect compensation therefor a franchise, as provided in the constitution, and when furnished outside of cities and towns, "shall be regulated and controlled, in the counties of this State, by the several boards of supervisors thereof, in the manner prescribed in this Act."

Section 2 makes it the duty of the board of supervisors to fix and regulate maximum rates on notice and petition as provided in the next section.

Section 3 provides for a petition by twenty-five inhabitants and tax-payers for the fixing of the rates and notice of not less than four weeks of the hearing thereof.

By section 4 the board is required, on the hearing, to estimate the value of the property of the company actually used and useful in supplying the water, and also its annual reasonable expenses, including the cost of repairs, management and operating such works.

Section 5 provides that the board may fix different rates for different purposes, such as mining, irrigation, manufactures and domestic use, but that the rates for each purpose *shall be equal and uniform.*

It is further provided in this section as follows:—

> "Said Boards of Supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations, and corporations so furnishing such water to such inhabitants shall be not less than six nor more than eighteen per cent upon the said value of the canals, ditches, flumes, chutes, and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations, and corporations; but in estimating such net receipts and profits, the cost of any extensions, enlargements, or other permanent improvements of such water rights or waterworks shall not be included as part of the said expenses of management, repairs, and operating of such works, but when accomplished, may and shall be included in the present cost and cash value of such work. In fixing said rates, within the limits aforesaid, at which water shall be so furnished as to each of such persons, companies, associations, and corporations, each of said Board of Supervisors may likewise take into estimation any and all other facts, circumstances, and conditions pertinent thereto, to the end and purpose that said rates shall be equal, reasonable, and just, both to such persons, companies, associations, and corporations, and to said inhabitants."

And after providing that the rates, when so fixed by the board, shall be binding and conclusive for not less than one year next after their establishment and until established anew or abrogated by the board, the section contains this further provision:

> "And until such rates shall be so established, or after they shall have been abrogated by said Board of Supervisors as in this act provided, the actual rates

established and collected by each of the persons, companies, associations and corporations now furnishing or that shall hereafter furnish appropriated waters for sale, rental, or distribution to the inhabitants of any of the counties in this State shall be deemed and accepted as the legally established rates thereof."

Section 6 of the Act provides for the establishment anew or abrogation of the rates fixed by the board, to take effect not less than one year next after their first establishment, and that this may be brought about either at the instance of twenty-five inhabitants, as provided for the fixing of rates in the first instance, or upon the petition of the corporation furnishing the water, and upon like notice as provided for the fixing of rates originally; and it is provided that all water rates fixed as in said section provided shall be in force and effect until established anew or abrogated as provided in the Act.

By section 7, it is required that a record be made of the establishment of the rates, and that the same be published the same as required for the publication or posting of the petitions and notices.

Section 8 provides that all companies or persons furnishing water for sale, rental or distribution shall furnish the same at rates not exceeding the established rates fixed by the board.

Section 9 provides a penalty for the collection of a higher rate than that fixed by the board of supervisors.

Section 10 provides that every corporation, company or person furnishing water in a county where rates have been so fixed may be compelled to supply the water at such rates to the extent of the actual supply of such appropriated waters of such person, company, association or corporation for such purposes; and if failure shall be made to supply the water on demand to the extent of his or its reasonable ability so to do, the company, association or person is made liable in damages to the extent of the actual injury sustained by the person or parties making demand for the water and tender of the rates.

Section 11 of the Act confers upon the company the right to condemn rights of way for carrying the water.

Taking the provisions of the constitution that the right to collect compensation for water is a franchise to be exercised as prescribed by law, this statute of 1885 prescribes the manner of fixing the rates and fixes the rights and obligations of the corporation supplying the water and its consumers.

Litigation has arisen over the provisions of this statute. In the case of Lanning v. Osborne, 76 Fed. Rep., 319, the complainant, Lanning, as receiver of the San Diego Land and Town Company, gave notice to the consumers of water under the system of said company of his intention to increase the rates for irrigation from $3.50 to $7.00 per acre. The consumers denied his right to increase or in any way change the rates already fixed, and established by the company. He brought an action in the United States Circuit Court to have his right to increase the rate established, and to prevent a multiplicity of suits intended to compel the company to supply the water at the old rate. The case was strongly contested. It was finally held by Judge Ross that until

action was taken by the board of supervisors in establishing rates, the company had the right and power, under the statute of 1885, to establish and re-establish its own rates; that if the rates fixed by the company were unreasonable or unsatisfactory to the takers of water, their remedy was to apply to the board of supervisors to fix the rates as provided by law, and that the court had no jurisdiction to inquire into the reasonableness of the rates until action taken by the board of supervisors. This case also involved other important questions relating to water rights and the power of the company to deal with them, which will be considered further on. The case was appealed to the Supreme Court of the United States, and the conclusions reached by Judge Ross, above stated, were by that court affirmed.

Osborne v. San Diego Land and Town Co.—U. S. (not yet reported).

So it may be taken as the settled construction of our State constitution and the statute of 1885, passed in pursuance of it, that a corporation furnishing water to the public has the right to fix and change its own annual rates until such rates are fixed by the board of supervisors, as prescribed by the statute, and that the only remedy of consumers taking water from the company, if the rates are not satisfactory, is to apply to the board of supervisors for the establishment of such rates.

In fixing rates by the board of supervisors, they must be governed by the statute which provides that the rates must be so fixed "that the net annual receipts and profits thereof shall be not less than six nor more than eighteen per cent. upon the value of the canals, ditches, flumes, chutes, and all other property actually used and useful to the appropriation and furnishing of such water."

It follows that when a court is called upon to determine whether rates fixed by the board of supervisors are reasonable or not, the standard fixed by the statute must control, and if the rates will not return at least six per cent. net on the value of the plant, they are, by the express terms of the statute, unreasonable.

And, doubtless, it will be held in this case, as in the fixing of rates in cities and towns, that the present value of the plant must be taken as the basis upon which return should be made.

(*b*) *Of the Water Right and the Power of the Company to Sell the Same.*

The question as to the exact right or ownership acquired by an appropriator of water for sale, rental or distribution, under the provisions of our constitution, has not been definitely settled by any adjudicated case. The constitution does not declare, as in Colorado, that the waters of flowing streams belong to the public. It declares:

> "The *use* of all water now appropriated, or that may hereafter be appropriated for sale, rental, or distribution, is hereby declared to be a *public use, and subject to the regulation and control of the State* in the manner provided by law."

Const., Art. XIV, Sec. 1.

And further:

> "The right to collect rates or compensation for the use of water supplied to any county, city and county, or town or the inhabitants thereof *is a franchise and cannot be exercised except by authority of and in the manner prescribed by law.*"

Const., Art. XIV, Sec. 2.

The statute of the State gives the right of appropriation. That such appropriation may be made by a corporation or individual for sale or rental to others is expressly recognized by the constitution. That by the appropriation of water the appropriator becomes the owner of the right to use it and to sell and convey that right to another has been the undisputed and undoubted law of this State from the beginning. Hence, unless the constitution, or some statute enacted in pursuance of it, has established a different rule in respect of appropriators for sale, rental or distribution, they must be regarded as having become the owners of the right to the use of the water appropriated. But there is this difference that must not be overlooked. In order to constitute a complete and valid appropriation, two things must concur, viz., the diversion of the water from the stream and its application to a beneficial use. In the case of an appropriation for private use, the diversion is made by and the application made to a beneficial use by the same person, thereby vesting in him the complete title to the right to use the water. This is simple enough, and presents no difficulties. But in the case of the appropriation for use by the public, the diversion is made by the corporation intending to sell and distribute the water, which is one of the acts necessary to acquire the right to the use of the water, and the application of the water to a beneficial use must be made by the party to whom the water is furnished, and, if furnished for irrigation, becomes appurtenant to his land, and belongs to him. Or the company may also be the owner of land and may apply the water to the land and afterwards convey both the land and the water right to a third party, which, as we shall see, carries with it the obligation of the company to supply the water by and through its system. The question has arisen, under these circumstances, whether the corporation can *sell* to another the right to the use of water diverted and stored by it, or make any contract in respect of such water right, or whether, under the constitution and laws of this State, the company must supply the water on demand and upon payment or tender of the annual rates, so-called, fixed as provided by law, without other consideration. There is great diversity of opinion on this subject. It is an interesting and important question.

Section 552 of the Civil Code is as follows:

> "Whenever any corporation, organized under the laws of this State, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land, on the

line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation."

See Price v. Riverside L. & T. Co., 56 Cal., 431, 441.

This section defines a water right such as a company dealing with water may vest in a consumer to whom it supplies water for irrigation. It is the right to "the perpetual easement of the flow of the water at such rates and terms as may be established by said corporation in pursuance of law." This right has not been taken away or changed by the constitution, subsequently adopted, or by any law enacted in pursuance of it, except that the right of the State to regulate the sale and distribution of the water is declared by the constitution, and the manner of fixing the rates and compensation at which the water shall be furnished has been prescribed by the statute of 1885. Therefore, the only change made is that now the board of supervisors *may*, on petition of twenty-five citizens, fix and establish the rates to be charged for the water furnished, while, under section 552, the right to fix the rates was in the company. And, as we have shown, the right to fix its own rates still exists in the company, until action is taken by the board of supervisors as provided by law.

Stat. 1885, p. 96, Sec. 5;

Lanning v. Osborne, 76 Fed Rep., 319;

Osborne v. San Diego Land and Town Co.—U. S.—(May 14, 1900, unreported.)

But the question remains, has the company such a water right in the water it has acquired the right to divert and sell, as it may and has the legal right to sell to one owning land under its system. And here we must distinguish between a water right, or the preferred right to the use of the water, and the annual rates to be paid for the water used. This distinction is made by section 552, which provides how the preferred right or easement of the right to the use of the water may be vested in the land-owner and that his right is subject to his payment of the rates fixed by the company as provided by law. The distinction has been recognized, practically, by all water companies, and parties dealing with them, by contracts made between them for such water rights; millions of dollars have been paid, and agreed to be paid, for water rights of this kind, and thousands of acres of land have obtained this valuable right by such contracts voluntarily, gladly, bought and paid for. The water right made appurtenant to land in the southern part of the State doubles, many times quadruples, the value of the land, or even more. The mere vested right to the use of the water at the rates fixed as provided by law is in almost all cases worth much more than the full value of the land before the right was obtained. In most cases, this value is added to the lands by the expenditure of large sums of money in diverting and storing the storm waters of the winter, and preparing the facilities for

distributing and supplying it to the lands within its reach. If the company owns land, and, after supplying the water to it, sells it, it charges and receives a largely enhanced price for the land. This is nothing more than selling a water right with the land. If it supplies water to the lands of another, it enhances the value of his land in the same way, and to precisely the same extent. So the water right is valuable property. When the land owner acquires it, he can, as all authorities agree, sell his water right as he can sell his land. This being so, why may not the company that has brought the water right into existence, sell the same water right to him? The Supreme Court of this State has recognized the right of companies of this kind to contract and sell such water rights and collect a consideration therefor, by enforcing such contracts.

Fresno Canal and Irr. Co. v. Dunbar, 80 Cal. 530;
Fresno Canal and Irr. Co. v. Rowell, 80 Cal. 114;
Clyne v. Benicia Water Co., 100 Cal. 310;
San Diego Flume Co. v. Chase, 87 Cal. 561;
Balfour v. Fresno Canal Co., 109 Cal. 221;
Fairbanks v. Rollins, 54 Pac. Rep. 79.

Indeed, the validity of such contracts seems never to have been doubted or questioned until certain decisions were rendered by Judge Ross, of the Circuit Court of the United States, which we now proceed to notice. In San Diego Land and Town Company v. National City, 74 Fed. Rep. 79, the Company was seeking to set aside an ordinance fixing rates for National City on the ground that the rates were unreasonable. Amongst other things, it was claimed by the company that the board of trustees should, in fixing the rates, have allowed a reasonable sum to be charged for a water right, for irrigation, because, if it once voluntarily furnished water to lands, it thereby, by force of Section 552, attached to said land, as a perpetual easement, the right to the flow and use of the water; and if compelled by the ordinance to so attach the easement to the land, it was thereby compelled to give away such water right or easement. Judge Ross, in presenting his views on this important question, expressed himself with his accustomed force and clearness. He says, (p. 86):

> "One of the objects of the present suit is to obtain a decree estabishing the validity of that claim of the complainant to exact a sum of money, in addition to an annual charge, as a condition on which alone the complainant will furnish consumers of water for irrigation purposes, other than to those it had furnished it for such purposes prior to December 18, 1892. And the contest that arose between the consumers and the company over this charge for a so-called 'water right,' and the refusal of the municipal authorities of National City to allow that charge in respect to acreage property within the city limits, is one of the principal causes of the present suit. It does not change the essence of the thing for which the complainant demands a sum of money to call it a 'water right,' or to say, as it does, that the charge is imposed for the purpose of reimbursing complainant in part for the outlay to which it has been subjected. It is demanding a sum of money for doing what the constitution and laws of California authorized it to appropriate water within its limits, conferred

upon it the great power of eminent domain, and the franchise to distribute and sell the water so appropriated, not only to those needing it for purposes of irrigation, but also to the cities and towns, and their inhabitants, within its flow, for which it was given the right to charge rates to be established by law, and nothing else. No authority can anywhere be found for any charge for the so-called 'water right.' The State permitted the water in question to be appropriated for distribution and sale for purposes of irrigation, and for domestic and other beneficial uses; conferring upon the appropriator the great powers mentioned, and compensating it for its outlay by the fixed annual rates. The complainant as not obliged to accept the benefits conferred by the constitu .1 and laws of California, it accepted them charged with the corresponding burden. Appropriating, as it did, the water in question, for distribution and sale, it thereupon became, according to the express declaration of the constitution, charged with a public use. 'Whenever,' said the Supreme Court of California in McCrary v. Beaudry, 67 Cal. 120, 121, 7 Pac. 264, 'water is appropriated for distribution and sale, the public has a right to use it; that is, each member of the community, by paying the rate fixed for supplying it, has a right to use a reasonable quantity of it in a reasonable manner. Water appropriated for distribution and sale is ipso facto devoted to a public use, which is inconsistent with the right of the person so appropriating it to exercise the same control over it that he might have exercised if he had never so appropriated it.' To the same effect is People v. Stephens, 62 Cal. 209; Price v. Irrigating Co., 56 Cal. 431."

But, after all, the learned Judge begs the question. He assumes the very matter in controversy, viz.: that the State granted to the corporation the privilege of appropriating the waters of its streams, and of resorting to the right of eminent domain, if necessary, to carry out its objects, *on the condition that it accept the annual rates fixed for water supplied and waived all right to charge more, either for the water right or in any other way.* If Judge Ross is right in his premises, his conclusion is unquestionably right and his reasoning unanswerable. But is he right in his assumption that the constitution takes away from the appropriator for sale, rental and distribution, the right to sell the water right it has appropriated? Confessedly, it is a valuable right, and one that, if the hands of a private individual, is the subject of sale and transfer. Is there anything in the constitution that declares, expressly or by implication, that the right is any the less valuable, or less the subject of sale, because the appropriation was made for sale, rental and distribution? The opinion does not say It is said: "No authority can anywhere be found for any charge for the so-called 'water right.'" This, it is believed, was a mistake. The decisions of the State Supreme Court above cited, are authority for a charge for the so-called water right. But, after all, that is not the question. No one will presume to deny, at the present day, that this so-called water right is valuable property. Unless there is some law against the sale of property, it is, of course, saleable. Therefore, the inquiry should have been, not whether there was any authority to be found for a charge for such property, but whether there was any law or decided case denying to such a company the power to sell, for a consideration, its own property. If not, its rights must be the same, in this respect, as those of other property owners.

This case was appealed to the Supreme Court of the United States, but

this question was not decided by that Court, it being held that a decision of the question was not necessary to a decision of the case. The Court said:

"One of the questions pressed upon our consideration is whether the ordinance of the city should have expressly allowed the appellant to charge for what is called a 'water right.' That right, as defined by appellant's counsel, is one 'to the continued and perpetual use of the water upon the land to which it has been once supplied upon payment of rates therefor established by the company.' In the opinion of the Circuit Court it is said that 'no authority can anywhere be found for any charge for the so-called 'water right.' This view is controverted by appellant, and cases are cited which, it is contended, show that the broad declaration of the Circuit Court cannot be sustained. Fresno Canal & Irrig. Co. v. Rowell, 80 Cal. 114; Fresno Canal & Irrig. Co. v. Dunbar, 80 Cal. 530; San Diego Flume Co. v. Chase, 87 Cal. 561; Clyne v. Benicia Water Co., 100 Cal. 310; San Diego Flume Co. v. Souther, (C. C. A.), 90 Fed. Rep. 164.

We are of opinion that it is not necessary to the determination of the present case that this question should be decided. We are dealing here with an ordinance fixing rates or compensation to be collected within a given year, for the use of water supplied to a city and its inhabitants or to any corporation, company, or person doing business or using water within the limits of that city. In our judgment the defendant correctly says in its answer that the laws of the State have not conferred upon it or its board of trustees the power to prescribe, by ordinance or otherwise, that the purchase and payment for so-called 'water rights' should be a condition to the exercise of the right of consumers to use any water appropriated for irrigation or affected with a public use.

The only issue properly to be determined by a final decree in this cause is whether the ordinance in question fixing rates for water supplied for use within the city is to be stricken down as confiscatory by its necessary operation, and therefore in violation of the constitution of the United States. If the ordinance, considered in itself, and as applicable to water used within the city, is not open to any such objection, that disposes of the case, so far as any rights of the appellant may be affected by the action of the defendant. The appellant asks, among other things, that it be decreed to be entitled to charge and collect for 'water rights' at reasonable rates *as a condition* upon which it will furnish water for the purposes of irrigation, notwithstanding the rates fixed by the defendant's board of trustees, for water sold and furnished within the city. That is a question wholly apart from the inquiry as to the validity under the constitution and laws of the State. Counsel for appellant, while insisting that the Circuit Court erred in saying that there was no such thing as a 'water right,' says: 'The constitution of the State has nothing whatever to do with a water right or the price that shall be paid for it. It simply provides for fixing the *annual rental* to be paid for the water furnished and used. When one obtains his water right by purchase or otherwise, he has a right to demand that the water shall be furnished to his lands at the price fixed, as provided by law, and that the company shall exact no more. But he must first acquire the right to have the water on such terms. Whether in fixing the annual rates to be charged, the body authorized to fix them can take into account the amount that has been received by the company for water rights, is another question, and one that is not presented in this case. Nor is any question raised as to what would be a reasonable amount to exact for a water right, or whether the courts can interfere to determine what is a reasonable amount to charge therefor.'

These reasons are sufficient to sustain the conclusion already announced, namely, that the present case does not require or admit of a decree declaring that the appellant may, in addition to the rates established by the ordinance, charge for what is called a 'water right' as defined by it. It will be time enough to decide such a point when a case actually arises between the appellant and

> some person or corporation involving the question whether the former may require, as a condition of its furnishing water within the limits of the city on the terms prescribed by the defendant's ordinance, that it be also paid for what is called a water right.'"

San Diego Land and Town Co. v. National City, 174 U. S. 739, 756.

It will be seen that the question in this case was whether a water company could exact a payment for a water right, as a condition upon which it would supply water, and against the will of the party demanding the water, and not whether the company had the legal right to *contract* for the sale of the water right and whether the parties, having voluntarily contracted, are legally bound by such contract.

But the question has been before Judge Ross in later cases, involving, directly, the question whether any such contract can be made, and he has held in unqualified terms that no such contract can be legally made.

Lanning v. Osborne, 76 Fed. Rep. 319, was one of these cases. This case involved the right of a water company, or its receiver, to fix its own rates in the absence of action by the board of supervisors. In that connection it was considered above. But the question of the effect of contracts for the sale of water rights was raised and it was decided that all contracts of that kind were void. The question was fully and ably treated in the opinion. It is said in the course of the opinion that two of the cases decided by the State Supreme Court as recognizing the validity of such contracts could not be so construed for the reason that it did not appear in either of the cases that the water the company undertook to sell was appropriated under or subject to the constitution and laws relating to water appropriated for sale, rental or distribution. In this the learned Judge was in error. In the case of Fresno Canal and Irr. Co. v. Dunbar, 80 Cal. 530, it was said, in the beginning of the opinion:

> "The respondent, the plaintiff in the court below, being a corporation engaged in diverting and supplying water for irrigation, entered into a contract with one Roeding, who was then the owner of a certain tract of land, by which the respondent sold to said Roeding, for the sum of twelve hundred dollars, a water right for said real estate, and in and by said contract 'grants, bargains, sells and conveys to the party of the second part, from the main canal of the party of the first part, or from a branch thereof, all the water that may be required, not exceeding at any time four cubic feet per second, for the purpose of irrigating said lands.'"

This showed clearly that the company was dealing with water in such way as to bring it within the provisions of the constitution and laws referred to. But, if there were any doubt as to these cases, there can be none that some of the other cases decided by the State Court, and which were not then brought to the attention of Judge Ross, do show on their face that the court understood, perfectly, that it was dealing with a contract for a water right made by a company that had appropriated it for sale, rental and distribution, and so amenable to the provisions of the constitution. These cases have been cited above. It should be said, however, in justice to Judge Ross, that these later

cases were not called to his attention, and further, that in none of the cases was the question directly raised as to the validity of such contracts or the power of a company appropriating water for sale, rental or distribution to make such contracts. Indeed, it may be said that up to the first decision rendered by Judge Ross, declaring such contracts to be invalid, no question of their validity had ever been suggested in any proceeding in court, and their validity was generally, if not universally, recognized and acted upon. But, in the case under consideration, the learned Judge supported his views by quotations from decided cases in Colorado, notably, Wheeler v. Irrigation Co., 17 Pac. Rep. 487. And the authorities cited fully sustain the conclusion reached by him, if our constitution and laws relating to the appropriation of the waters of running streams, are the same in legal effect as those of Colorado. But they differ very materially—so much so, that it is believed that if the cases cited are correctly decided, they are not in point in this State. The Colorado constitution provides:

> "The water of every natural stream not heretofore appropriated within the State of Colorado is hereby declared to be *the property of the public*, and the same is *dedicated to the use of the people of the state*, subject to appropriation as hereinafter provided."
>
> Art. XVI, Sec. 5.

There is an obvious and material difference between that provision and the one in our constitution relating to the same subject. Our constitution does not declare the waters of natural streams to belong to the public or dedicate the same to the use of the public. When the constitution was adopted, the code of this state authorized the appropriation of the waters of all natural streams without limit, except that it must be for a useful purpose. This right was in no way interfered with by the constitution, except that it provides that when appropriated for sale, rental, or distribution, it is a *public use*, and *subject to state regulation and control*. That is to say, when water is appropriated for such purposes, the State may regulate and control the manner of supplying the water and the price to be charged for it. With this single limitation, the ownership and interest in the water is the same, as the result of an appropriation of it, as that of any other appropriator. The State can no more interfere with or deprive such an appropriator of water or its right to the use of it, further than to exercise a proper regulation and control over its use in supplying the water to others, than it can in case of an appropriation for private use. It is upon this very ground that it has been uniformly held that to impose what the court sometimes call confiscatory rates is a violation of the provision of the constitution of the United States, against taking property without due process of law or just compensation. Such decisions can rest only on the acknowledgment of ownership in the company dealing with the water. But it is enough to say that our constitution manifests no intention or purpose of taking away or limiting the ownership in the water or to do more than preserve to the State the right to regulate and control its use. And

this is because it is a "public use." But it was as much a public use before the adoption of the constitution as it is now. The constitution simply declares what was the law before. It is a public use, the same as the exercise of its franchise to carry passengers and freight, by a railroad company, is a public use. And the right to regulate and control its use of such rights is the same in one case as in the other, and for precisely the same reason, and on the same principle. And who would say that because a railroad company is exercising a public use, its railroad or rolling stock or its earnings are public property, and belong to the people? The effect of the Colorado constitution, as compared with one like our own, was considered by the Supreme Court of Idaho in Wilterding v. Green, 45 Pac. Rep. 134, in which it was said:

> "The marked distinction between the provisions of the constitution of Colorado and that of Idaho will be apparent upon a very slight inspection of the two. The Colorado constitution is prospective. It makes provision and lays down rules that 'The water of every natural stream not heretofore appropriated within the State of Colorado, is hereby declared to be the property of the public,' etc. Prior to the adoption of this constitutional provision, the right of private persons to acquire property in natural streams through appropriation had been recognized in Colorado, as it had been throughout the Pacific coast; but the character of this right was changed by the constitutional provision above quoted, and thereafter the water of such streams became and was 'the property of the public.' Compare section 5 of article 16 of the constitution of Colorado with section 1 of article 15 of the Idaho constitution, which is as follows: 'The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental, or distribution, also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented or distributed, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner prescribed by law.' The distinction between the two provisions, it seems to me, is too palpable to require elucidation or warrant discussion. The Colorado constitutional provision recognizes the previous existence of private property rights in the water of natural streams, but prohibits the acquisition of such rights in the future. The Idaho constitution does not pretend or assume to control or interfere with private property rights in such waters, but declares the use of all such waters, whether theretofore or thereafter appropriated, a public use, and under the control of the State. The doctrine of the Colorado court, that the canal or ditch owner is a mere 'common carrier,' could not, certainly, be predicated upon the provisions of the Idaho constitution. That it was the purpose and intention of the Idaho constitution to deal only with the 'use' of water, and not with the property rights of appropriators therein, is, I think, further evidenced by the including within its provisions 'all water originally appropriated for private use but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed.' The sale, renting, and distributing of the water is a dedication, and brings its use under the control of the State, but it in no sense destroys or abrogates the property rights of the appropriator therein."

And this language was used in commenting upon Wheeler v. Irrigation Company, cited by Judge Ross as supporting his view.

It would seem from what has been said that there is nothing in our constitution, as there is in the constitution of Colorado, that affects the ownership or rights of a water company in, or prevents it from contracting for, the sale of

a water right. But this does not wholly dispose of the question. The constitution does declare the use of the water to be a public use, and that the right to collect rates or compensation for the use of the water is a franchise, and *"cannot be exercised except by authority of and in the manner prescribed by law."* Obviously, the constitution does not, itself, take away the right of the company to contract for the sale of a water right. But it is just as obvious that it does vest the power to do so in the legislature. And if the legislature has done this thing, it is just as binding as if it had been done by the constitution.

We shall see, when we come to consider the question of annual rates, that the legislature has taken away the power of the company to fix such rates by contract. And unless a distinction can be made between payment for a water right and the payment of annual rates for water used, I am firmly convinced that no charge can be legally made for such right. If, in other words, the rate fixed as provided by law, whether by the company or by the board of supervisors, is the only charge that can be made, then it is manifest that no charge of a different sum can be made in advance of supplying the water for the preferred right to its use, or the water right. But here the writer is not in accord with other lawyers in this State. As a rule, lawyers take one of two grounds, viz.: that the whole matter of compensation is open to contract between the parties concerned, both for water rights and annual rates, or that no valid contract can be made for compensation or rates for either. The effort will be made, further along, to show that the first of these positions cannot by any possibility be maintained. In this connection, reasons will be given why the second is equally erroneous.

The legislature has by the statute of 1885 provided how "rates" shall be established.

Stat. 1885, p. 95.

It will be seen that it is confined to the fixing of "maximum rates." Is the preferred and perpetual right to have the water at the rates so fixed property, and subject to sale? If it is, there is no law in this State to prevent such sale. That it has been regarded in practice as a valuable property right and made the subject of barter and sale, no one will presume to deny. That it is regarded as a valuable right by the law-making powers of the State is evidenced by the fact that it is secured to the land owners perpetually by section 552 of the Civil Code, and is made more valuable by the provisions of the constitution, and of the statute of 1885, by which the owner of the right is protected from the imposition by the company of unreasonable rates.

Now, let us see by the actual experience of the company in dealing with water, whether this water right is or is not a valuable and salable commodity. We will take the case of the San Diego Land and Town Company, the party interested in the litigation in which the decisions of Judge Ross are rendered, as an example and illustration. That company was the owner of a large body of land in San Diego county, known as the National Ranch. It was what is

known in this semi-arid region as "dry" land; that is, crops and fruit could not be grown upon it without irrigation. This dry land was worth from twenty-five to fifty dollars an acre. The company appropriated the waters of the Sweet Water River and constructed a dam, reservoir and distributing system, at a cost of something over a million dollars, and connected the system with its own and other lands. It sold the land, with water, for three hundred dollars an acre and upwards, and it was easily worth that sum. Without water it was worth fifty dollars. Now, what was it that added two hundred and fifty dollars an acre to the value of the land? It was the water right, and nothing else. This water right had been provided by the expenditure of over a million dollars by the company. According to the decision of Judge Ross, the company had no power to sell its land for this advanced sum, because it was charging for a "so-called water-right," and the constitution forbids it. But there is nothing in the constitution or any statute that forbids the sale of a water right with the land, and if such a doctrine is engrafted upon the laws of this State by judicial legislation, the broad acres of Southern California may as well be turned back into sheep pastures, for no corporation or individual can possibly develop and supply water in the southern part of the State for expensive irrigation and storage works necessary to store and supply water, under such a construction of the law. Section 552 contains a second clause which provides that "whenever any person in cultivating land on the line and within the flow of any ditch owned by such corporation has been furnished water by it with which to irrigate his land, such person shall be entitled to the continued use of said water upon the same terms as those who have purchased the land of the corporation." That is to say, when water is furnished to the lands of another not sold by the company, it vests in the owner of the land a water right, or the right to the perpetual use of the water as an easement and appurtenant to the land. Take the case of the San Diego Land and Town Company again. By appropriating and storing the water, and the expenditure of over a million dollars therefor, it converted its own land from "dry" land worth fifty dollars an acre to "irrigated" land, or land with water right attached, worth three hundred dollars an acre, and it sold readily for that, and in some cases for much more. By appropriating this water and furnishing the facilities for storing and delivering it, the company is prepared to convert the dry land of other owners worth fifty dollars an acre, into irrigated land, or land with water, worth three hundred dollars an acre. Must the company give away this water right to other land owners, or has it the right to charge for it? Judge Ross holds that the company must furnish the water for the asking, and thereby vest the land with a water right worth two hundred and fifty dollars an acre, but that it cannot charge for it; he says, because the constitution forbids it. But does the constitution forbid it? There seems to be nothing in the constitution that can reasonably be construed to have this effect by implication, and certainly it contains no express provision on the subject, and the

learning and industry of Judge Ross and of counsel interested in the case fail to find any such inhibition in the constitution or in any State statute. It is maintained that the constitution makes all water appropriated for sale, rental or distribution a public use, and subject to the regulation and control of the State in the manner to be prescribed by law. So it does. But it has never been prescribed by law that a water company shall give away its water rights, or that it should not be allowed to charge any compensation therefor. When the constitution was adopted, Section 552 was in force, which allowed the company to fix its own rates for supplying water, but this provision had nothing whatever to do with the water right, whether sold with the land of the company or to be attached to other lands. It applied solely to the amount to be charged for storing and distributing the water. Under the constitution, the act of 1885 was enacted, which changed the old law only in the particular that by its provisions, if the rates for supplying the water fixed by the company were not satisfactory, any twenty-five citizens of the county may petition the board of supervisors to fix the rates, and the board must do so. It is simply an additional protection to the holders of water rights against the fixing of unjust rates after they have acquired their water rights. There is nothing in the statute or in the constitution that goes further than this. But it is said the constitution provides that the right to collect rates or compensation for water supplied is a franchise, and cannot be exercised except by the authority of and in the manner prescribed by law. So it does. But so is the operation of a railroad franchise, and can only be exercised by authority of and in the manner prescribed by law. Both kinds of corporation can obtain rights of way, reservoir sites, water rights, depot sites, and other permanent property necessary to the conduct of their business, as prescribed by law, namely, by condemnation. The railroad company's rates are regulated by law, the same as those of the water company, and both are subject to the control of the public authorities; but would any court hold that because the rates or fares of a railroad are fixed by law, it cannot sell its franchise or right of way or other property belonging to it, where it is not expressly forbidden to do so, and if not, why can it be held, or for what reason, that a water company that had bought and paid for, or condemned and paid for, or appropriated under the laws of the State, a water right, can be compelled to transmit that water right, or any part of it, to another, without compensation? The constitution does not so provide, nor does the statute. If they did, it is submitted tha it would be in violation of the constitution of the United States, for this would be taking property without compensation, or confiscation, plain and simple.

In the case of Lanning v. Osborne, the cases of Price v. Irrigating Company, 56 Cal. 431, and People v. Stephens, 62 Cal. 209, are cited as supporting the views expressed in the opinion in that case, and they do support such views to the extent of holding that the use of water is a public use that may be and has been regulated by the State. In Price v. Irrigating Co., the court said (p. 434):—

> "The defendant, therefore, is bound to furnish plaintiff with water to irrigate his lands on his payment of the rates fixed in the manner prescribed by law,—it having the water to furnish."

But the question of the right to charge for a water right was not in question, much less the question of the rights of the company and a consumer to voluntarily contract for such right for a consideration. But obviously this is the real, and it is believed the only question involved, viz.: must the law providing for the fixing of rates and forbidding the company to charge other than the rates so fixed, be held to forbid, by implication, the sale, for a consideration, of the water right or preferred and perpetual right to the use of the water once supplied? The statute certainly does not forbid such sale in terms. But the strength of the very able and exhaustive opinion in the Lanning case lies right here. The position taken, briefly stated, is that the charge for a water right is but another way of adding an additional charge for the water used. And, it is not without force, it must be conceded. But it must be borne in mind that the constitution and statues were passed and adoped with full knowledge that just such a separate charge was being contracted for and made. It was a matter of common knowledge, a part of the history of the State. Not only so, but the Code then in force recognized, in terms, the distinction between the easement or right to the perpetual flow of the water and the rates to be charged for the water used. And why should the right to contract for property so valuable be denied by the courts under such circumstances, where the law does not forbid it?

The importance of the right on the part of the land owner to make such a contract may be further illustrated by the experience of the company above mentioned.

When the company had in contemplation the construction of its system of water works, it was advised by its engineer that the system would supply for irrigation purposes twenty thousand acres of land. There were that number of acres of land under its system. It constructed its works with that understanding and belief. It was found by experience, after the works were completed, that the duty of the system was not to exceed seven thousand acres, about one-third of its previously estimated duty. As has been said above, the right to procure water from that system increased the value of the land under it from fifty dollars to three hundred dollars. Some of the land owners under the system must obtain that right to the exclusion of others, for the reason that there was not water and facility for supplying it sufficient to irrigate nearly all of the land. Now, why might not a land owner who desired to procure this preferred right, as against other land owners under the system, agree with the company to pay it a reasonable consideration for such right to have the water supplied to his land? There can be no reason, unless the law forbids it. If not, unquestionably, it was property, and the subject of contract between the parties. If the law does forbid it, of course that is an end of the question; so that the sole question here is, as stated above, whether

the constitution and statutes can properly, and ought to be, construed as containing an inhibition against making such contract.

There were other cases decided by Judge Ross, confirming the conclusion reached by him in the Lanning case. In Souther v. San Diego Flume Company, an action was brought against the company to rescind a contract for a water right, on the ground that it had failed to furnish the full supply of water. The company, by way of a cross bill, set up the same contract and sought to recover upon it the amount agreed to be paid for the water right. It was held that neither praty was entitled to recover; that the complainant could not rescind the contract, because it was void, and the cross-complainant could not recover on it for the same reason. The case was decided on the authority of the Lanning case, and the opinion is not reported.

In the case of Mandell v. San Diego Land and Town Company, one Sharp intervened and sought to force the company to supply his land with water. The company defended against his claim on the ground that his lands were at such an elevation as to render it difficult and expensive to supply the water; that it had contracted with Sharp to supply his land for only five years, and that he, by the contract, expressly waived his right to claim the right to the use of the water for a longer time, by virtue of Section 552 of the Civil Code or otherwise. But it was again held that the special contract was void, and as the company had commenced to supply the water, notwithstanding the consumer had expressly contracted that supplying the water should not have that effect, in his favor, he was entitled to its perpetual flow.

Mandell v. San Diego Land and Town Company, 89 Fed. Rep. 295.

All three of these cases were appealed; the Lanning case to the Supreme Court of the United States, and the others to the United States Circuit Court of Appeals. In the Lanning case, reported under the title Osborne v. San Diego Land and Town Company, the Supreme Court declined to pass upon the question, and affirmed the decision on other grounds.

In Souther v. San Diego Flume Company, the decision of Judge Ross was reversed, the Circuit Court of Appeals holding that the company and its consumers had the right to contract, not only for a water right, but for annual rates, and that the Supreme Court of this State had, by its decisions, recognized the validity of such water right contracts.

San Diego Flume Co. v. Souther, 90 Fed. Rep. 164.

But a rehearing was granted in this case on the petition of attorneys not interested in the case, but whose clients were interested in the questions involved. The case was re-argued and again submitted and taken under advisement, but a decision has not yet been reached.

The decision in the Sharp case was affirmed, but without deciding the important question of the validity of the contract mentioned.

San Diego Land and Town Co. v. Sharp, 97 Fed. Rep., 394.

So the decisions of Judge Ross against the validity of such contracts stand

alone up to the present time. His opinions have been well considered and are entitled to the respect due to the decisions of an able and distinguished judge, fully understanding and appreciating the transcendant importance of the question with which he is dealing. The question is one about which there may well be decided differences of opinion, and that such differences do exist, amongst judges and lawyers thoroughly competent to pass upon the question, has been fully demonstrated.

The case of Fresno Canal and Irrigation Company v. Parks is now pending in the State Supreme Court. It has been submitted, briefs have been filed by able attorneys representing parties to the suit, and other briefs, on both sides of the question, have been submitted by the attorneys interested in the question. An early decision is expected but there is doubt whether the decision of the case requires a decision of this question. And if it does, the diversity of opinion on the subject is so great that only the spirit of prophecy would enable one to say what the result is likely to be.*

OF THE QUESTION OF THE RIGHT TO FIX RATES BY CONTRACT.

We have seen that by the statute of 1885 the manner of fixing rates is prescribed in conformity to the provisions of the constitution. Two modes of establishing the rates are provided for, viz.: by the board of supervisors on the petition of twenty-five inhabitants who are tax payers of the county, and by the person, company, association or corporation furnishing the water. Stat. 1885, pp. 95, 97, Secs. 3, 5.

As the constitution provides, in terms, that "the right to collect rates or compensation for the use of water is a franchise and cannot be exercised except by authority of and in the manner prescribed by law," and the statute has prescribed these two modes of establishing the rates, and these only, it would seem to follow conclusively that rates cannot be established in any other way. But this apparently clear proposition has not gone unchallenged. On the contrary, it is stoutly maintained that, notwithstanding the constitution and statute, the company supplying the water and its consumers may, by their own private contract, establish an unalterable rate as between them. But this is so manifestly subversive of the constitution and statute as to render it entirely untenable. The undoubted policy and intention of the law is that rates shall be equal and uniform to all takers of water from the same system for the same

*NOTE.—Since this paper was put in type the case of Fresno Canal and Irrigation Co. v. Parks has been decided. The decision upholds the right of a water company to contract with a consumer for both a water right and annual rates, but subject, nevertheless, to State control and regulation. But what power of regulation can remain in the State if the parties can legally bind themselves by contract, cannot be readily perceived. This problem is left to further adjudication.

purpose or kind of use. That the rates shall be equal and uniform, when fixed by the board of supervisors, is expressly provided by the statute, as follows: *"But such rates as to each class shall be equal and uniform."* By implication it must be held that the "actual rates established and collected by the company" must be equal and uniform. If the use of the water is a public one, as it undoubtedly is, it must necessarily be supplied to all takers under like conditions at the same price and on the same terms and conditions, independently of any statutory provision to that effect. Now, if it is once admitted that rates may be fixed by contract between the company and each of its consumers, the power of regulation by the state is lost, and the constitution and statute providing therefor are effectually abrogated, and every consumer may, by virtue of his contract with the company, have a different rate from every other consumer under the system. But it must be remembered that the rate to be charged is a matter of public concern. The right to petition for the fixing of rates by the board of supervisors is not confined to takers of water from the company. It may be exercised by any twenty-five inhabitants and tax payers. It must be obvious that this right given to a class of the public cannot be taken away by any contract made by the company with some other person belonging to that class or not as the case may be. It is true that the power of the board of supervisors is to fix maximum rates and the inhibition against the company is that it shall not charge more than the rate fixed. It may charge less, undoubtedly. But if it does, it must establish the same rate for all its consumers. It could not charge one more and another less, but whatever rate it exacts must be equal and uniform. So it cannot, in the nature of the case, fix rates by contract, but must by some general order or otherwise fix a uniform rate to be imposed upon all of its consumers. But, as said, this has been and is now being contested in the courts. The position was taken in Lanning v. Osborne, above reviewed, that the company might fix the annual rate to be paid by contract with its consumers, and, further, that by representing to parties buying land from it that water would be supplied at a stated rate, the company was estopped to thereafter increase the rate. Judge Ross held against both of these contentions, saying:

> "The views above expressed are conclusive against the positions of the defendants, unless it be, as claimed by them, that the complainant is estopped from making any changes in the rates at which it has heretofore furnished the defendants with water, or that the water in question is so far private property as that the parties to the suit could make valid contracts in respect to the rates at which the company should furnish it to the defendants. If the company is a private corporation, and the water private property, this would undoubtedly be so; but if the complainant is a public or quasi public corporation, and the water in question is, and at all the times mentioned has been charged with a public use, it is not true; for nothing can be clearer than that, in respect to such water, rates established in pursuance of law must control, and that no attempt to ignore that control and to establish them by private contract is of any validity. The fact that some of the purposes for which the complainant company was incorporated are purely private is unimportant,

since among the purposes is 'the supplying of water to the public,' and 'the construction and maintenance of dams and canals for the purpose of water-works, irrigation, or manufacturing.'"

* * *

"As the water in question, from the moment the appropriation became effective, became charged with a public use, it was not in the power of either the corporation making the appropriation or of the consumers to make any contract or representation that would at all take away or abridge the power of the State to fix and regulate the rates. All persons are presumed to know the law, and those who bought lands from the complainant corporation upon its representations that water for irrigation would be furnished at the annual rate of $3.50 an acre, or otherwise acted or contracted with reference to such rates, must be held to have known that the constitution conferred upon the legislature the power, and made it its duty to prescribe the manner in which such rates should be established. This the legislature has done by the act of March 12, 1885. As by that act the legislature deemed it proper to allow the action of the board of supervisors to be invoked in the first instance only by twenty-five inhabitants, who are tax-payers of the county, and until then to leave the designation of rates to the person, company, or corporation furnishing the water, to hold valid and binding any contract between parties with reference thereto would be, in effect, to ignore and set aside the provisions of the statute upon the subject; for it is plain that a contract must bind all of the parties to it, or it binds none; and, if binding at all, its manifest effect would be to remove from the regulation of the State the rates in question, and leave them to be governed and controlled by private contract, or such representations and acts as may amount to the same thing. No company or corporation charged with a public use can be estopped by any act or representation from performing the duties enjoined on it by law. It will hardly be contended that the defendants, by reason of any of the express contracts, pleaded in defense of the suit, or of any contract growing out of the representations alleged to have been made by the company, would be estopped from applying to the board of supervisors of the county for the establishment of rates. The case, in truth, affords no basis for the operation of an estoppel against either party; which, to be good, must be mutual."

This reasoning seems to be unanswerable. On the appeal of this case to the Supreme Court of the United States, the positions taken in the Circuit Court were again advanced, and it was further contended that if the constitution and laws of California did take away or abridge the right of the company and its consumers to contract with reference to their property, they were in violation of the constitution of the United States. The Supreme Court did not pass upon any of these questions, in terms, but decided the case on other grounds. But the reasoning of the Court in passing upon the question whether rates fixed by the company were forever fixed, and unalterable, is pertinent as establishing the doctrine that the intention of the law is to regulate rates from time to time to meet changed conditions, and that no rate could be held to be irrevocably established, whether fixed by the board of supervisors or by the company. It is said:—

"The purpose of the Act rejects such view. Its purpose is regulation, deliberate and judicial and periodical regulation by a selected tribunal, and we cannot believe that the legislature intends by an absolute and peremptory provision to fix rates upon the water companies unalterable by them, no matter what change in conditions might supervene. Against rates which may become

unreasonably high, the statute gives relief to consumers through petition to the board of supervisors. Rates which may become unreasonably low, it surely does not intend to impose on the companies forever, except as relief may come from the voluntary justice of its customers or by a violation of the statute and appeal to the courts, There is nothing in the Act to indicate the regulation of the rates by law, not commanded to be exercised by the governing bodies as a voluntary duty as establishing rates in cities and towns, but exercised when invoked by petition. Until the necessity of that, what more natural and just than to leave the right with the water companies and recognize it as legal. This is the meaning, we think, of the provisions of sections 5 and 8, *supra*. To so interpret them makes the scheme of regulation complete—adequate, without being meddlesome or oppressive. The power of regulation is asserted and provided for, and ready to be exercised to correct abuse, and who doubts but that its exercise would be invoked."

In the case of Fresno Canal and Irrigation Co. v. Parks, pending in the State Supreme Court, and above mentioned, this claim of right to fix rates by private contract is again asserted, this time by the supplier of water. In the other case, the contention was by the water consumers.

The only decision, so far, upholding this asserted right to fix rates by contract, is that of Souther v. San Diego Flume Co., 90 Fed. Rep. 164. The Circuit Court of Appeals, after reviewing the cases, reach this conclusion:

"Corporations engaged in the business of furnishing water for irrigation, under the laws of California, whether they acquire the water by appropriation of the waters of the State or otherwise, are private corporations. They are nowhere declared to be public corporations or quasi public. They conduct their business for private gain. For reasons affecting the public welfare, they are given the right of eminent domain, and, in order that the use of the water may be fairly and equitably adjusted to consumers and their rights protected under the constitution, it is provided that in a certain contingency the rate to be paid by the consumer may be fixed in a manner prescribed by law. The use is public only to the extent that the corporation may be compelled to furnish the water, provided it has the capacity to do so, to all who receive and pay for the same, and that the rule of compensation shall be fixed by the law in case the parties cannot agree."

It is believed, however, that this conclusion is based upon an entire misconception of the nature and obligation of a corporation dealing with water in such way as to bring it within the provisions of our constitution. Such a corporation is not a private corporation, but a *quasi* public corporation, in so far as it deals with the public use in the water. The difference between such a corporation and one supplying water to its own stockholders, and not to the general public, is pointed out in McFadden v. Supervisors, 74 Cal. 571. And the Circuit Court of Appeals has granted a rehearing in the Souther case, so that the decision is no longer authority. It is cited for the purpose of showing the views of the judges rendering the decision as the case was then presented.

There is another statute bearing on this subject that should be noticed in this connection. After an adverse decision was rendered against them by Judge Ross in the Lanning case, the water takers affected by the decision sought to make a good defense for themselves by securing legislation by which

it was hoped to make valid the water right contracts that had been held in that case to be void. The act is an amendment to the statute of 1885, and adds a new section, as follows—:

> "Section 11½. Nothing in this Act contained shall be construed to prohibit or invalidate any contract already made, or which shall hereafter be made, by or with any of the persons, companies, associations or corporations described in section 2 of this Act, relating to the sale, rental, or distribution of water, or to the sale or rental of easements and servitudes of the right to the flow and use of water; nor to prohibit or interfere with the vesting of rights under any such contract."

Stat. 1897, p. 49.

This amendment to the statute was pleaded at a later stage of the case, but Judge Ross held that it did not purport to make valid any contract otherwise invalid, and had not the effect to render valid the contracts in question there, and his conclusion as to the invalidity of all such contracts was again stated.

Lanning v. Osborne, 82 Fed. Rep., 575.

This amendment grew out of the exigencies of the occasion, and is utterly inconsistent with the other provisions of the act. It simply provides that nothing in the act shall be construed as invalidating certain contracts, when it cannot properly be given any other construction, and makes the whole act an absurdity if given the effect intended. The act provides that the board of supervisors shall, when petitioned to do so, fix the rates to be charged. If the rates so established are not to take the place of and abrogate rates fixed by the contract of the parties, the statute is no better than so much blank paper, and the constitutional right of regulation is a delusion.

OF THE LAW OF IRRIGATION DISTRICTS.

The law of irrigating districts has ceased to be of general interest. It has become important only to the unfortunate bondholders of the districts now in existence and the more unfortunate property owner therein whose property is subject to taxation to pay the bonds. The law has proved such a dismal failure, in its practical workings, that it is not likely that the formation of any new districts under it will ever be attempted. The principal question now is how the districts that have been formed can be dissolved without unlawfully destroying, or interfering with, vested rights, particularly the rights of bondholders and other creditors of the districts. Litigation that has grown out of the irrigation district laws has been mainly the result of efforts to defeat the organization of the districts and prevent taxation by them. This being the condition of things, a minute examination and review of the various statutes will not be of general interest. But a paper on the irrigation laws would certainly not be complete without calling attention to these statutes and the decisions resulting from them.

A statute was enacted in 1872, providing for the organization of drainage and irrigation districts.

Stat. 1872, p. 945.

This statute was very general in its terms, and did not prove to be of much importance, so far as the formation of irrigation districts was concerned, and therefore need not be further noticed. Later, in 1887, a statute, commonly known as the Wright Act, and containing an elaborate scheme for the organization and operation of irrigation districts, was enacted. It provides for a petition of "fifty, or a majority of freeholders owning lands susceptible of one mode of irrigation from a common source, and by the same system of works," to the board of supervisors, for the formation of the district; for notice and proceedings before the board; for elections to determine whether the district should be formed; and for the election of officers; for the issuance of bonds when authorized by a vote of the property-owners; for the levy and enforcement of taxes for the payment of the bonds, and other things of lesser importance.

Stat. 1887, p. 29.

Much was expected of this statute, and an avalanche of districts followed, most of which have proved to be disastrous failures, and probably none but had better never have been brought into existence. For the first few years thereafter, amendments to this first statute were enacted, in order to make it more effective.

Stat. 1889, p. 15.
Stat. 1891, pp. 142, 244.
Stat. 1893, pp. 175, 516.

Of these statutes, intended to aid and strengthen the original act, was what is known as the "Confirmation Act," by which, after proceedings for the organization of the district, or the issuance of the bonds, the board of directors are authorized to petition the Superior Court of the County for a decree confirming the validity of such proceedings.

Stat. 1889, p. 212.

Then followed a reaction. It was found that the practical operation of the statute was not what had been expected, and a wide-spread dissatisfaction with the statute, and with the operation of the districts organized under it, followed, and has continued down to the present time. As a result of this feeling, other statutes have been enacted with a view to make the original statute *less* effective, to prevent the formation of new districts, and to provide a means of bringing the old ones to an end by a dissolution of them in some lawful way, and the reduction of their bonded indebtedness.

Stat. 1893, pp. 276, 520;
Stat. 1895, p. 127;
Stat. 1897, p. 254.

The last of the foregoing statutes is even more elaborate than the original

Wright Act. It is not important, however, except that it makes the organization of such districts more difficult and makes it quite certain that unless a decided change of public sentiment takes place, no districts will ever be formed under this new Act, which was probably intended to be its effect.

In the meantime, the courts, both State and Federal, have been called upon to pass upon numerous questions growing out of these various statutes.

The most important of the questions decided are as to the constitutionality of the act providing for the organization of districts, and as to the effect of the Confirmation Act, and proceedings under it.

In the case of Bradley vs. Fallbrook Irrigation District, 68 Fed. Rep., 948, Judge Ross, of the Circuit Court of the United States, held the act to be in violation of the Constitution of the United States. It is unfortunate, looking at the question from the point of view of public interest, that this decision was not adhered to, as it would have relieved the State of an incubus that has been a most serious detriment to its best interests, and freed thousands of acres of land from the blanket lien of an exorbitant bonded indebtedness that, in most cases, is not likely ever to be paid. But the Supreme Court of the United States reversed the decision of Judge Ross, and held the statute to be constitutional, Chief Justice Fuller and Justice Field dissenting.

Fallbrook Irrigation District v. Bradley, 164 U. S., 112.

And the State Supreme Court has upheld the constitutionality and validity of the Act in a number of cases.

Turlock Irrigation District v. Williams, 76 Cal., 360;
Crall v. Poso Irrigation District, 87 Cal., 140;
In re Madera Irr. Dist., 92 Cal., 296;
In re Central Irr. Dist., 117 Cal., 382.

So it may be regarded as settled that the law for the organization of irrigation districts is constitutional and valid.

As to the effect of the Confirmation Act, it is a separate and independent statute, and not an amendment of the act for the organization of districts.

In re Central Irr. Dist., 117 Cal., 382.

Its object was to remove all doubt as to the validity of the proceedings for the organization of the districts, and for the issuance of the bonds, and to insure the sale of such bonds.

Crall v. Poso Irr. Dist., 87 Cal., 140.

The State Supreme Court has held, contrary, it is believed, to the rule applied in other like cases, that the law for the organization of districts should be liberally construed.

Central Irr. Dist. v. De Lappe, 79 Cal., 351.

And, while the Supreme Court of the United States intimated, in the case of Tregea vs. Modesto Irrigation District, 164 U. S., 179, if it did not decide, that the proceedings for confirmation were of no binding effect, as

an adjudication, the Supreme Court of California has held that the decree of confirmation is binding and conclusive, not only as to the district and its property-owners, but as against the State of California and the whole world.

Crall v. Poso Irr. Dist., 87 Cal., 140;

Board of Directors Modesto Dist. v. Tregea, 88 Cal., 334;

Rialto Irr. Dist. v. Brandon, 103 Cal., 384;

People v. Linda Vista Irr. Dist., (May 18, 1900, unreported).

This may be so in respect of all questions of procedure, and as to irregularities, but it is submitted, with respect, that such decree cannot supply a want of jurisdiction in the board of supervisors which would render their proceedings void. If so, persons claiming to be directors of districts, but who are not so in fact, may ask the Superior Court to decree void proceedings to be valid, and thereby organize a district by a decree of that court, which is wholly unauthorized, and, by a subsequent decree, founded upon the fact that the district has been organized and directors elected, authorized to prosecute the proceeding, breathe the breath of life into a body that never breathed before, and make a district out of whole cloth. If this can be done, any three or more men *claiming* to be directors of a district may come into court and have a decree rendered that such district has been legally organized, when no steps have ever been taken for such purpose, or even thought of. The Supreme Court may have intended to go this far, but if so, it has certainly gone in the face of well-settled rules of law to the contrary. A void proceeding, resulting from a want of jurisdiction, is as nothing. No subsequent action of that or any other court can make it valid. This rule is elementary. Applying it to a case of this kind, it is impossible, if the proceedings before the board of supervisors are void for want of jurisdiction, that any decree of another court can make them good or estop any one from asserting them to be bad. But it is not believed that the Supreme Court intended to go so far. The right to attack the proceedings of the Superior Court for want of jurisdiction is recognized in Board of Directors vs. Tregea, 88 Cal., 334, 347. And if they can be attacked in one way on the ground that they are void for want of jurisdiction, they can in any other legal way, collaterally or otherwise, and at any time. It is also held that where the petition for the organization of a district is not signed by the requisite number of freeholders owning lands in the district, it is fatal to the organization, and a proceeding to confirm cannot be maintained.

Directors Fallbrook Irr. Dist. v. Abila, 106 Cal., 355.

This was in a proceeding to confirm the action of the board of supervisors, and the question was raised by answer. But the court holds that the confirmation proceeding cannot be maintained where the board had no jurisdiction. If the decisions of the court can properly be construed as holding the confirmation proceedings to be conclusive on the question of jurisdiction, it holds that if there is a want of jurisdiction a confirmation proceeding can-

not be maintained, but if it is maintained and the Superior Court finds there was jurisdiction, when there was not, everybody is conclusively bound to the fact that what was not, really was.

The court has also held that the finding of the supervisors of facts giving them jurisdiction, is not conclusive in the confirmation proceedings, but may be inquired into by the Superior Court.

In re Central Irr. Dist., 117 Cal., 382.

It does not follow, however, that such fact may be questioned in any collateral proceeding or action. Indeed, it has been held in a number of cases that the proceedings for the formation of the district cannot be attacked collaterally.

Quint v. Hoffman, 103 Cal., 506;
Miller v. Perris Irr. Dist., 85 Fed. Rep., 693;
Miller v. Perris Irr. Dist., 92 Fed. Rep., 263.

But this, again, cannot properly be extended so far as to prevent a collateral attack upon the proceedings if they are void for want of jurisdiction. To so hold is to overturn the well-settled rule of law that a proceeding void for want of jurisdiction may be attacked at any time and in any form, collaterally or otherwise. If, therefore, a property-owner should attempt to enjoin the enforcement of a tax against his land, by an alleged district, which never had an existence because the proceedings for its organization were void, this would undoubtedly be good ground for such injunction. A different rule was laid down in Miller vs. Perris Irrigation District, 85 Fed. Rep., 693. But the learned Judge delivering the opinion failed to distinguish between an action to inquire into the organization or existence of a corporation, which can only be prosecuted by the State, and an action to prevent an illegal assessment and enforcement of taxes against the property of a private individual. It would be singular if such an action could not be maintained by showing that the parties levying and attempting to collect the taxes had no legal authority or power to do so, because they were not a district or officers of a district. Certainly this could be shown, if the parties complained of made no claim to be or represent a district or other corporation possessed of the power of taxation. And if the proceedings for the organization of the district are wholly void, it would be precisely the same as if no such proceedings had ever been had. The case of Norton vs. Shelby County, 118 U. S., 426, contains the view here taken. It distinguishes between an effort to question the acts of a *de facto* officer of an existing corporation and an attack upon the ground that the office itself has no existence. Notwithstanding what is said of this case in Miller vs. Perris Irrigation District, *supra*, it applies directly to conditions such as we are now considering, because here the right claimed is not to show that a *de facto* officer of an existing office was not authorized to act as such, but that no such office or corporation had an existence, and therefore the levy of taxes made on his property was illegal and void.

See also People v. Toal, 85 Cal., 333;
Beach Pub. Corp., Sec. 890.

The rule is correctly stated in Beach on Public Corporations as follows:

> "When the attempted organization of a municipality is void, such a body may plead the invalidity of its organization in defense, to a suit brought on its bonds since it has no power to issue them."

If the alleged corporation may defend against liability growing out of facts void because it was not a corporation, certainly the same fact would be good ground for preventing the taking or selling of property by it for taxes it had no power to levy.

Another question growing out of these statutes should be noticed. Quo warranto proceedings have been brought by the people to test the validity of the organization of some of the districts. The act for the organization of such districts, as amended, contains this provision:—

> "And no action shall be commenced or maintained, or defense made, affecting the validity of the organization, unless the same shall be commenced or made within two years after the making and entering of said order."

Stat. 1891, p. 143, Sec. 3.

Does this limitation bind the State in a proceeding to forfeit the charter of the district and to forbid its further usurpation of the franchises and powers of a corporation? It has been maintained, in some of the pending actions, that it does. But this can hardly be so, as the code provides that the attorney-general may bring the action whenever he has reason to believe that any such office or franchise has been usurped.

Code Civil Procedure, Sec. 803.

And the Supreme Court has held, in a number of cases, that the usurpation of the franchise of a corporation is a continuing wrong, and each day such wrongful act is repeated is another and separate cause of action.

People v. Stanford, 77 Cal., 360, 377;
People v. Reclamation District, 50 Pac. Rep., 1068;
People v. Jefferds, 126 Cal., 296.

The language of the court in the last case cited is:

> "The continued exercise of a franchise, without right, is a continuously renewed usurpation on which a new cause of action arises each day."

If this be so, there could be no bar to an action of this kind by limitation, so long as the usurpation continues. And, as the last case cited was one against an acting irrigation district, it would seem to be conclusive of the question.

Still another question of interest has been presented in an action of quo warranto to question the right of the Perris Irrigation District to exercise the franchises of a district. It was alleged and proved in that case that the order of the board of supervisors organizing the district and two confirmation proceedings were produced by fraud, that one of the decrees of confirmation was procured on one publication of notice of the time and place of hearing the petition, when three publications were necessary by law, and the other

by bribing the attorney of certain contestants of the order of confirmation to absent himself when the petition came on for hearing, by which no defense was made. The particular fraud alleged and proved was that signers of the petition were not *bona fide* freeholders, but had been made such by conveyances to large numbers of them of small tracts of land under an agreement to reconvey the same as soon as the district was formed, which agreement was carried out, and that it was concealed from the board of supervisors and Superior Court that this had been done. The case has not yet been decided by the Supreme Court. TheSupreme Court has decided that signers of such a petition must be "bona fide owners of agricultural lands desiring to improve the same by conducting water thereon."

In re Central Irr. Dist., 117 Cal., 382, 398.

Anirrigation district is held to be a public corporation that cannot be dissolved for misuser or non-user of its corporate powers in the absence of a law conferring power on the courts to pass a judicial sentence dissolving such corporation upon those grounds.

People v. Selma Irr. Dist., 98 Cal., 206.

The statute authorizing the issuance and sale of bonds provides that the bonds may be exchanged for certain purposes. This is held by the Supreme Court to be a limitation of power on the part of the board of directors, and that bonds cannot be exchanged for other purposes than those mentioned, but must be sold for cash.

Hughson v. Crane, 115 Cal., 404.

The intention of this paper has been to call attention to the most important questions growing out of our irrigation laws, and decisions relating to them, and to point out some of the defects that, in the judgment of the writer, should, in the interest of the public, be corrected. The subject could not be fully covered in an article of this kind. It has not been the purpose to comment upon, or even cite, all of the decided cases, but only the most important of them. The study of the question of water rights and irrigation laws is most interesting. It deserves a more careful study than has yet been given it, with a view to a better understanding of it, and a speedy correction of its defects. If this paper shall serve to bring this about, in any degree, the writer will be sufficiently repaid for the labor bestowed upon it. There is one subject connected with the water supply of the State that has not been dwelt upon here because it does not fall within the irrigation laws or decisions. But it should not be overlooked. It is the absolute and imperative necessity of preserving the water supply. The unnecessary and often wanton destruction of our forests and all undergrowth and vegetation that has heretofore protected and preserved our water supply is nothing less than a public calamity that should be prevented by the most stringent penal laws and the withdrawal from sale of all timbered land to private individuals, by the national government and the acquisition by it, if possible, of such lands already sold.

——*JOHN D. WORKS.*

Los Angeles, September, 1900.

TRAGIC HISTORY OF THE SHARON CASES

BY THE EDITOR

The TRAGIC HISTORY of the SHARON CASES

William Sharon, born in Ohio, of Quaker parents, on the 9th of January, 1820, arrived in California on August 15, 1849, and followed the business of a real estate broker. He prospered, and, after a good many years, speculated in the mines on the Comstock lode, in Nevada, on a vast scale, and acquired a fortune of many millions of dollars. He was president of the syndicate which reorganized the Bank of California, after its suspension, in 1875. He had then for some years, had charge of the Virginia City (Nev.) agency of that bank. In February, 1874, he purchased the *Enterprise* newspaper of that place. In the following year he was elected, as a Republican, United States senator for Nevada, and served a full term of six years, being succeeded by James G. Fair, Democrat, on the 4th of March, 1881. His wife died in San Francisco in 1875. He had two daughters. One of these, who has since deceased, became the wife of Frank G. Newlands, who has now for a long period been representative in Congress from Nevada; the other married Sir Thomas Hesketh, of England, in 1880.

In the San Francisco city directory for 1879-80 is to be found the name "Miss S. A. Hill, resides The Baldwin," and in the same book for 1880-81 appears, "Miss Allie Hill, resides The Baldwin"—her first appearance, and her last, on the directory pages.

The "Life of David S. Terry" appeared in 1892—by A. E. Wagstaff (a name very favorably known) authorized by Judge Terry's son. Of course, the book is quite interesting. Sarah Althea is thus introduced in the well-written story:

> Dramatic incidents are usually embellished by a woman, and no woman is capable of creating incidents of moment, involving the attention of the public, unless possessed of some extraordinary abilities or peculiar characteristics not in keeping with the usual order of her sex. The Pacific Coast has been the nursery of surprises in almost every department of life. It was here millionaires were first counted in large numbers, vast wealth supplied the sinews of war for the rebellion, and schemes of marvelous engineering surmounted obstacles in crossing the mountains and building the transcontinental railway. Society was also shocked with her characters, and the

enterprise of a Meiggs and his compeers astonished the country. The clash of nationalities represented in the avenues of trade and commerce only irritated the spirit of enterprise with its cosmopolitan ideas. Among the contributions to society was a Missouri girl whose advent was noted in 1870. She came unheralded and unknown, and was only one of a thousand who had preceded her. She would have probably remained in modest obscurity had she not become infused with a spirit of speculation in an endeavor to regain a foolishly-spent fortune. At that time both sexes were wild over mining stocks, but, unfortunately for her, she was endowed with a rash and impetuous nature, backed by zeal and determination, and her faculties for scheming in the channels of the general gamble were sharply defined. In her contact with the world, all her faculties were on edge. She was a woman of fair education, strong passions, and infinite resources, in the pursuit of whatever fancy took possession of her mind, and in her endeavors to obtain wealth in the field of speculation, she became acquainted with Hon. William Sharon, then United States senator from the State of Nevada, who was a wealthy banker and controlled vast mining interests. The social intimacy and business relations, whether honorable or not, led to the most startling results.

The following brief mention of the lady is taken from what is said to be a correct history of her former life in Missouri, and as its correctness has never been challenged, it is here presented without comment:—

"Sarah Althea Hill was born near the town of Cape Girardeau, Missouri, in 1848. She comes of good stock, her father being Samuel Hill, a prominent attorney, and her mother, Julia Sloan, the daughter of a wealthy lumber-dealer. She has one brother, Hiram Morgan Hill. Her parents died in 1854, leaving the two orphans an estate valued at $40,000. Sarah is related to some of the best families in the country.

"She attended school at Danville, Kentucky, and finally graduated from St. Vincent convent, Cape Girardeau, Missouri. She had a governess in the person of a Miss. Barrall, a sister of ex-Congressman Hatcher. Her grandfather, Hiram Sloan, was her guardian, and appears to have held a slack rein.

"The young woman developed a spirited temper, and soon reaching legal age, made her money fly. She grew up into womanhood in much her own way, and was noted for her beauty and temper. She was a schemer, above all things, and this made her unpopular among her girl companions. It was said of her, too, that, though she was a spendthrift, she worshiped money, and gave her attention mostly to those who possessed it. She is remembered by her friends here as something of a flirt, and at one time is said to have had three engagements to marry on her hands. One of the parties is now a prominent politician in Southeastern Missouri, and another resides in St. Louis.

"Her conquests were numerous during the time she held her sway. She was fast, but her name was never tarnished with scandal. In love affairs Sarah was tyrannical, and more than one of her lovers had to suffer her iron rule and eccentric whims.

"It is said that she really loved one young fellow, named Will Shaw. They were engaged to be married, but as the result of a tiff the young man determined to break the engagement. Sarah heard of this, and when next he called she was so charming that he pressed his suit with more ardor than ever, when she had her revenge by snubbing him.

"The story goes that she really wanted and expected him to return, but he did not, and in September, 1870, disgusted and broken-hearted, with only the shadow of her fortune, she started for California.

"A young uncle named William Sloan accompanied her to the Coast. He was wealthy and took his niece to his mother's home. Sarah and the old lady did not live in harmony, and Sloan gave the girl a fine suite of rooms in a hotel. It is there that she met Senator Sharon."

These were the parties to a litigation which extended over a period of years in the State and Federal courts, marked by incidents and episodes unprecedentedly strange, and accomplishing the worst ends of fate for a number of persons.

On the 3d of October, 1883, William Sharon, declaring himself to be a citizen of Nevada, brought suit in the United States Circuit Court at San Francisco against Sarah Althea Hill (the Miss Hill above) to obtain a decree adjudging that a certain paper, purporting to be a declaration of marriage between them, was a forgery, and ordering that the paper be cancelled. In his complaint Sharon alleged that he was possessed of a large fortune in real and personal property; was extensively engaged in business enterprises and ventures, and had a wide business and social connection; that, as he was informed, the defendant was an unmarried woman of about thirty years of age, for some time a resident of San Francisco; that within two months then past she had repeatedly and publicly claimed and represented that she was his lawful wife; that she falsely and fraudulently pretended that she was duly married to him on the 25th day of August, 1880, at the city and county of San Francisco; that these several claims, representations and pretentions were wholly and maliciously false, and were made by her for the purpose of injuring him in his property, business and social relations; for the purpose of obtaining credit by the use of his name with merchants and others and thereby compelling him to maintain her; and for the purpose of harassing him, and, in case of his death, his heirs, and next of kin and legatees into payment of large sums of money to quiet her.

He prayed for a decree that the defendant had never been his wife; that he did not make any declaration of marriage, and that she be perpetually enjoined from making any allegation of marriage with him; and that she deliver up the alleged marriage contract for cancellation.

On the first day of November, 1883, before pleading to Sharon's complaint in the United States Court, Sarah Althea, giving her name as Sarah Althea Sharon, and declaring that she was the wife of William Sharon, brought an action for divorce against him, in the Superior Court of San Francisco. She alleged that the two had been married by virtue of having made and signed a written marriage declaration at San Francisco on the 25th of August, 1880—that is, the same alleged contract for the cancellation of which Sharon had brought suit against her four weeks prior. She prayed that the alleged marriage might be declared legal and valid, and that she might be divorced from him on account of certain infidelities, which she set forth. Alleging that he was worth fifteen millions of dollars, with an income of over one hundred thousand dollars per month, she prayed that an account might be taken, to ascertain what portion of his wealth was their common property, and that this be equally divided between them. Her attorneys were Geo. W. Tyler and his son, W. B. Tyler (Tyler & Tyler). Judge Terry was called in afterwards.

On November 10th Sharon filed his answer in this suit, denying the alleged marriage, declaring that the document in question was forged; that he had never heard of it until within sixty days then past, and further, in

regard to his property, that he was not worth over five million dollars, and his income was not over $30,000 a month.

On November 24th on petition of Sharon, the parties being citizens of different States, this action was transferred from the Superior Court to the United States Circuit Court, where his own cause was pending. General W. H. L. Barnes was Sharon's attorney in both suits, ex-Supreme Judge Wm. T. Wallace being "of counsel."

Next on December 3d Sarah Althea filed a demurrer in the first action.

On December 31st the second suit, that had been instituted in the State court, and removed as stated, was, by agreement between the parties, remanded to that tribunal for trial.

On March 3, 1884, Sarah Althea's demurrer in the first suit was overruled by United States Judges Sawyer and Sabin, with leave to her to answer Sharon's complaint on payment of $20, the usual terms. Before further proceedings there, the trial of the second suit was begun in the Superior Court, before Judge J. F. Sullivan, on March 10, 1884, a jury being waived.

There was a widely accepted notion in the public mind, and even among many lawyers, that there was some sort of interference on the part of the Federal courts to negative or obstruct the free action of the State courts in this great controversy. There was no real basis for this idea—the jurisdiction of the Federal courts first attached. While the trial at which we have now nearly arrived, was in progress in the State court, and during the pendency of appeals, proceedings were had at long intervals, in the United States Circuit Court, as follows:

On the 24th day of April, 1884, a plea in abatement was filed.

On the 5th day of May, 1884, a replication to said plea was filed.

On the 16th day of October, 1884, an order adjudging said plea false, etc., was made and entered.

On the 30th day of December, 1884, an answer was filed.

A replication to said answer was filed on the 2nd day of January, 1885.

On the 25th day of February, 1885, a supplemental answer was filed.

A replication to said supplemental answer was filed on the 11th day of March, 1885.

On the 15th day of January, 1886, a final decree was entered.

This decree, made on the 15th of January, 1886, was dated as of September 29th, 1885, and entered as of this last given date, for two reasons, namely: First, that was the date of the final submission of the cause to the court after argument; and, second, Mr. Sharon had died after the submission and before the decree—on November 13, 1885.

This decree adjudged that the alleged marriage contract was false, counterfeited, fabricated, forged and fraudulent, and therefore utterly null and void, and directed that it be surrendered to the clerk of the court for cancellation within twenty days. As a matter of fact the document was never delivered over; and when, more than three years thereafter, David S. Terry,

who had meanwhile married Sarah Althea, was called upon, not by this court, but by the State Supreme Court, to produce the paper, he responded that it had been burned, with his residence at Fresno, in 1889.

The decree of the United States Circuit Court was signed by Judges Lorenzo Sawyer and Matthew P. Deady, and was entered actually, not constructively, just three and a half years prior to the final disposition of the case by the Supreme Court of the State.

The trial of the action in the Superior Court was begun on March 10, 1884, and was concluded on the 17th of September following, covering eighty days of actual trial.

Its adventurous course need not be closely followed here. George W. Tyler was often in trouble. There was nearly a personal collision between Terry and Barnes in the court-room. Some witnesses for Sarah Althea were sent to the State prison before the case ended, for perjury.

During the progress of the trial, the defense learned that on the 1st of May, 1883, the plaintiff had visited a newly-made grave, prepared for the body of Anson Olin, at the Masonic cemetery, in San Francisco, and there, in the presence of a Mr. Gillard, employed in the cemetery, she deposited, under the box which was to contain the coffin, a package. The body was on the same or next day deposited in the grave over the package, which remained there until the grave was opened, after the commencement of the trial.

These proceedings of the plaintiff came to the knowledge of the defense, while ex-Superior Judge Oliver P. Evans, associated with General Barnes, was cross-examining her. Under an order from the health officer authorizing it, the grave was opened, and the package referred to was found under the coffin. It contained a few articles of Sharon's underwear. Judge Evans held up each bit of clothing before the plaintiff in court, and asked if she had ever seen them before. She answered that she had not.

The evidence of a fortune-teller, a witness for Sharon, detailed conversations the plaintiff had with her in the latter part of 1882 and the early part of 1883, with reference to a grave-yard charm, and what she, the fortune-teller, had advised was necessary in order to perfect that charm; that the plaintiff must wear about her person, for nine days and nine nights, certain specific articles of clothing, of the man whom she desired to marry; and that afterward she should deposit them in a newly made grave before the burial of the body, between the hours of twelve and one o'clock at night; and that when the buried clothing would rot, the man whom she desired to marry would either marry her or die.

Subsequently, the conditions of this charm were modified, so that the articles might be deposited in the day-time, rather than at night. There was testimony also that the plaintiff did wear about her left leg, above the knee, a sock or socks of the defendant, for nine days and nine nights; also that she slept in one of Sharon's shirts.

During the trial, General Barnes had reason to suspect that there was a secret agreement between Geo. W. Tyler and the handwriting expert, Gumpel, by the terms of which Gumpel was to swear to the genuineness of the signature ("William Sharon, Nevada") to the alleged marriage contract, and, in the event of the plaintiff's success, was to receive a very large reward. The General freely expressed this thought, and Tyler saw his opportunity to get for everybody interested, and the public, too, some first-class sport, if nothing else. He wrote out, in his own hand, such a document as General Barnes believed to be existing, subscribed the names of himself and Gumpel, and placed the paper in his private drawer in his office. Gumpel gave Tyler lessons in the art of simulating his (Gumpel's) signature. Tyler's chief clerk was John F. McLaughlin, quite a capable young man, admitted to the bar, and by arrangement between the two, McLaughlin waited on General Barnes at his residence and told him that he had discovered among his employer's private papers, a contract between him and Gumpel (reciting its terms), and that he would get it and hand it over, if suitably compensated. McLaughlin was bold enough to say, substantially, "Mr. Sharon has sworn in his pleadings that his income is thirty thousand dollars a month. Give me one month's income, and I'll steal the agreement and deliver it up to you."

Passing by the details of the negotiation, which indeed did not take up much time, General Barnes agreed to pay McLaughlin twenty-five thousand dollars for the document. He actually paid him that sum in new crisp, government bills, (Sharon's money), at the General's house at night, and received the desired paper. There was no witness present.

Gumpel had sworn that the Sharon name to the alleged marriage contract was a genuine signature. General Barnes argued that if Gumpel and Tyler had entered into such an agreement as supposed, it was a demonstration that the whole thing was a conspiracy.

The affluent McLaughlin did not see fit to ever go back to his post as law-clerk, but hastily arranged to flee the country. He was on the Honolulu steamer before Tyler knew of his success. He went from Honolulu after a very short stay, to Australia, where he was unmolested, and where, a few years later, he died. In Honolulu he started a steam laundry, and lost the greater part of his fortune in the venture.

The high-priced "agreement" was exhibited in court, but when Tyler declared that it was a decoy, and pointed to its face for proof, General Barnes did not long question it. Tyler was indicted for obtaining money ($25,000) under false pretenses, and was tried in the Superior Court (Judge T. K. Wilson's department), and the jury disagreed, standing ten for acquittal. This was on July 3, 1886. On a second trial, the jury again disagreed, August 21, 1886. He was not prosecuted further. He received no part of the money paid to McLaughlin.

On the 24th of December, 1884, Judge Sullivan rendered his decision in favor of Sarah Althea, finding that the alleged marriage contract was genuine,

and that under it the parties had been married since August 25th, 1880; that the defendant had deserted her, and that she was entitled to a divorce and to a division of the community property. On the 16th of February, 1885, the same court made an order directing the defendant to pay the plaintiff before the 9th of March, alimony in the sum of $7,500, and the further sum of $2,500 per month. It was also ordered that the defendant pay counsel fees as follows:

To Tyler & Tyler, $20,000; to George Flournoy, $10,000; to Walter H. Levy, $10,000; to David S. Terry, $10,000; and R. P. Clement, $5,000—all these being plaintiff's attorneys.

Sharon appealed from the judgment, at first without asking for a new trial, confident that the findings did not support the judgment, Judge Sullivan having found among other things that defendant never introduced plaintiff as his wife, nor spoke of her as such in the presence of other persons; that plaintiff never introduced defendant as her husband, nor spoke to nor of him to other persons in his presence as her husband; that the parties were never reputed among their mutual friends to be husband and wife, nor was there at any time any mutual, open recognition of such relationship by the parties, nor any public assumption by the parties of the relation of husband and wife.

The Supreme Court, however, held that the findings supported the judgment (75 Cal., 1).

Sharon also appealed from the order allowing alimony and counsel fees. The Supreme Court modified Judge Sullivan's order by reducing the $7,500 and $2,500 respectively to $1,500 and $500, and entirely denied all counsel fees by reversing the order on that point.

This decision was rendered on the 31st of January, 1888. It was written by Justice McKinstry, and Chief Justice Searls and Justices Temple and Paterson concurred. Justices Thornton, McFarland and Sharpstein dissented.

Immediately after this decision the heirs of Sharon (who had died November 13, 1885) placed this litigation so far as they were concerned, in the hands of William F. Herrin as their attorney, and he thereafter continued in charge of the case until the conclusion of this remarkable litigation, as hereinafter stated.

Sharon had in due time made his motion for a new trial in Judge Sullivan's court, and while it was pending he died, November 13, 1885. It was overruled on the 4th day of October, 1886, the executor of the will being substituted in his place and perfecting an appeal both from the judgment and from the order denying a new trial.

Pending this last appeal, the executor, F. W. Sharon, commenced a suit in the United States Circuit Court against David S. Terry and Sarah Althea Terry to revive the old suit in equity which William Sharon had instituted on the 3d of October, 1883.

Judge Terry had married Sarah Althea at Stockton, January 7, 1886.

This last suit by the executor against Terry and wife was filed on the 12th of March, 1888. Wm. F. Herrin was the plaintiff's attorney.

Just one month later Francis G. Newlands, as trustee named in a trust deed which William Sharon had executed nine days before his death (conveying his vast estate in trust for his heirs), also brought a like suit in the same court to revive the original action, the defendants being David S. Terry and Sarah Althea Terry; Wm. F. Herrin being the attorney. Stanly, Stoney & Hayes appeared as attorneys for the defendants and demurred. The demurrer was overruled, and the original suit of William Sharon against Sarah Althea Hill was, by order entered September 17, 1888, revived in the name of Frederick W. Sharon, as executor, against David S. Terry and Sarah Althea Terry.

In the second suit to revive there were united with Mr. Newlands as complainants Frederick W. Sharon (both as executor and individually), and William Sharon's heirs.

In these cases briefs were filed on the Sharon side by R. S. Mesick and Samuel M. Wilson. Wm. F. Herrin submitted a written argument of 120 printed pages octavo on that side. David S. Terry made an oral argument in reply; John A. Stanly also.

The cases came before the Circuit Court for determination on the 3d of September, 1888, the judges sitting being Field, Sawyer and Sabin. The doctrine was laid down that when a Federal court and a State court may each take jurisdiction of the same subject matter and parties, the tribunal whose jurisdiction first attaches will retain it to the final determination of the controversy.

The opinion was written by Justice Field. We quote:

"The great question in both cases was the genuineness of the alleged marriage contract—the holder, Sarah Althea, affirming its genuineness, and the alleged signer, William Sharon, asseverating its forgery. Both have accompanied their statements with their oaths. Both have not testified to the truth; there is falsehood on one side or the other. The burden of proof was on her, and the learned Judge of the State Court often speaks of testimony offered by her in terms of condemnation. In one passage he says of certain testimony given by her: "This is unimportant, except that it shows a disposition which crops out occasionally in her testimony to misstate or deny facts when she deems it of advantage to her case." Again, with respect to alleged introductions of her to several persons as the wife of Sharon, the Judge says: "Plaintiff's testimony as to these occasions is directly contradicted; and in my judgment her testimony as to these matters is willfully false." As to her testimony that she advanced to Sharon in the early part of her acquaintance $7,500, the Judge says: "This claim, in my judgment, is utterly unfounded. No such advance was ever made." Again the court said: "The plaintiff claims that the defendant wrote her notes at different times after her expulsion from the Grand Hotel. If such notes were written, it seems strange that they have not been preserved and produced in evidence. I do not believe she received any such notes." Again, a document purporting to be signed by Sharon was produced by her, explaining why she was sent from the Grand Hotel in the fall of 1881, and also acknowledging that the money he was then paying her was part of $7,500 she had placed in his hands. The production of the paper for inspection was vigorously resisted, but it was finally produced. At a subsequent period, when called for, it could not be found. Of this paper the Judge said:

"Among the objections suggested to this paper as appearing on its face, was one made by counsel that the signature was evidently a forgery. The matters recited in the paper are, in my judgment, at variance with the facts which it purports to recite. Considering the stubborn manner in which the production of this paper was at first resisted, and the mysterious manner of its disappearance, I am inclined to regard it in the light of one of the fabrications constructed for the purpose of bolstering up plaintiff's case. I can view the paper in no other light than as a fabrication."

There are several other equally significant and pointed passages expressive of the character of the testimony produced in support of her case. Of what she attempted, the Judge thus speaks: "I am of the opinion that to some extent plaintiff has availed herself of the aid of false testimony for the purpose of giving her case a better appearance in the eyes of the court; but sometimes parties have been known to resort to false testimony, where, in their judgment, it would assist them in prosecuting a lawful claim. As I understand the facts of this case, that was done in this instance." Notwithstanding this characterization of parts of her testimony, the genuineness of the alleged marriage contract rests to a great extent upon her testimony. It would seem that the learned Judge reached his conclusions without due regard to a principle in the weighing of testimony, as old as the hills, and which ought to be as eternal in the administration of justice, that the presentation knowingly of fabricated papers, or false evidence, to sustain the story of a party, throws discredit upon his whole statement. It is generally deemed equivalent to an admission of the falsity of the whole claim.

The opinion concluded with these words:

The judgment of this court is that the demurrers in both cases be overruled; that in the first case the original suit of William Sharon against Sarah Althea Hill, now Sarah Althea Terry, and the proceedings and final decree therein stand revived in the name of Frederick W. Sharon as executor, and against Sarah Althea Terry and David S. Terry, her husband—the said executor being substituted as plaintiff in the place of William Sharon, deceased, and the said David S. Terry being joined as defendant with his wife, so as to give to the said plaintiff executor as aforesaid the full benefit, rights and protection of said final decree, and full power to enforce the same against the said defendants at all times, and in all places, and in all particulars. In the second case, that of Francis G. Newlands, trustee, and others, beneficiaries under the trust deed, the defendants will have leave to answer until the next rule day.

During the reading of this opinion in the presence of a large audience, in which were many leading members of the bar and prominent citizens, occurred the most remarkable instance of contempt known to the annals of American courts. Statements describing it were subscribed and sworn to by Joseph D. Redding, now of the New York bar; Alfred Barstow, and J. H. Miller, well-known lawyers; General Thomas B. Van Buren (a name widely known); W. W. Presbury, John Taggart, N. R. Harris, A. L. Farish, deputy United States marshals; Henry Finnegass, the noted government detective; the United States marshal; Henry Finnegas, the noted government detective; the United Glennon, police officers, who were sent to the court-room by the captain of police, I. W. Lees. Officer Bohen prefaced his account with the words that Captain Lees had said that he had just learned that the decision was about to be rendered in the Sharon case, and if it should be against the Terrys, that they (the Terrys) might make trouble, and that we should render any assistance that might be needed in preserving the peace. We need only give the statement of Marshal Franks, which was substantially corroborated by all the others just named. It is as follows:

I am and have been since March, 1886, the United States marshal for the northern district of California. On the 3d day of September, 1888, I was standing where I usually stand in the court-room, on the west side of the railing enclosing the place where the clerk of the court sits, while Judge Field was reading his decision in the case of Sharon vs. Terry. Judge Terry and his wife, Mrs. Terry, sat at the large table for attorneys in front of the railing around the clerk's desk, they being to my left, Mr. Terry being farther away from me. Judge Field had read for a few minutes when Mrs. Terry stood up, interrupting the court, and said, among other things, "You have been paid for this decision." Judge Field then ordered her to keep her seat, but she continued, saying, "How much did Newlands pay you?" Then Judge Field, looking towards me, said, "Mr. Marshal, remove that woman from the court-room." Mrs. Terry said, in a very defiant manner, "You cannot take me from the court." I immediately stepped to my left to execute the order, passing Judge Terry to where Mrs. Terry was standing. Mrs. Terry immediately sprang at me, striking me in my face with both her hands, saying, "You dirty scrub, you dare not remove me from this court-room." Mrs. Terry made this assault upon me before I had touched her. I immediately moved to take hold of her, when Judge Terry threw himself in my way, getting in front of me, and unbuttoning his coat, said, in the most defiant and threatening manner, "No man shall touch my wife; get a written order," or words to that effect. I put out my hands towards him, saying, "Judge, stand back; no written order is required"; and just as I was taking hold of Mrs. Terry's arm, Judge Terry assaulted me, striking me a hard blow in the mouth with the right fist, breaking one of my teeth, and I immediately let his wife go and pushed him back. He then put his right hand in his bosom, while at the same time Deputy Farish, Detective Finnegass and other citizens, caught him by the arms and pulled him down in his chair. I caught hold of Mrs. Terry again, Mr. N. R. Harris, one of my deputies, coming to my assistance, and we took her out of the court-room into my office, she resisting, scratching and striking me all the time, using violent language, denouncing and threatening the judges and myself, claiming that I had stolen her diamonds and bracelets from her wrists, and calling several times to Porter Ashe to give her her satchel, I, during the whole time, using no more force than was necessary, considering the resistance made by her, addressing her as politely as possible. When we got her into the inner room of my office, I left her in charge of Mr. Harris, went into the main office, saw a body of men scuffling at the door, heard Deputy Marshall Taggart say, "If you attempt to come in here with that knife, I will blow your brains out." I said, "What, has he a knife?" Deputy Farish answered and said, "He had a knife, but we took it away." I then took hold of Judge Terry, and with the assistance of others, pulled him in the main office and shut the door. I had him and his wife placed in my private office in charge of Deputy Marshals Harris, Donnelly and Taggart. I then went into the court-room, and when I had been there but a short time, Mr. Farish came in and said, "Mrs. Terry wants her satchel, which Porter Ashe has." I went into the corridor and found Mr. Ashe with the satchel. I requested him to hand it to me; at first, he refused, saying that it was Mrs. Terry's private property, and he was going to deliver it to her. I told him she was my prisoner, and her effects should be in my custody, and if he did not give the satchel up I would place him under arrest. He then gave it to me, and I told him to come with me into my office, and I would open it in his presence. He did so, and I opened it and took therefrom, a self-cocking 41-calibre Colt's pistol, with five chambers loaded, the sixth being empty; after which I delivered the satchel to Mrs. Terry. Mr. Ashe then said he did not intend to give the satchel to her with the pistol in it. I append hereto a photograph of the bowie-knife taken from the hands of Judge Terry by a citizen, with the assistance of my officers, and handed to me by the citizens, and also a photograph of the pistol taken from Mrs. Terry's satchel, both photographs exhibiting the actual size of these weapons. All this occurred in the Appraisers' Building, corner of Washington and Sansome streets, in the presence of and within the hearing of the United States Judges, while they were delivering the decision.

I noticed Judge Terry and his wife during the reading of the opinion, and, as some

points were being decided against them, I carefully observed them before I commenced to remove Mrs. Terry from the court-room, and there was no word or act that I observed on the part of Judge Terry to restrain his wife in her conduct, or to take her from the court-room, or to assist me in doing so. On the contrary, Judge Terry resisted me with violence, as I have stated.

After Judge Terry was placed in my inner office, as I have above stated, he used very abusive language concerning the Judges, referring to Judge Sawyer as "that corrupt son of a ———," and also saying, "Tell that bald-headed old son of a ——— Field that I want to go to lunch"; and after the order was made committing him six months for contempt, Judge Terry said: "Field thinks that when I get out, he will be away, but I will meet him when he comes back next year, and it will not be a very pleasant meeting for him." Mrs. Terry said several times that she would kill both Judges Field and Sawyer.

J. C. FRANKS,

Subscribed and sworn to before me this 17th day of September, A. D. 1888.

F. D. MONKTON,
Commissioner U. S. Circuit Court.

Judge Terry's statement of what occurred is as follows:

I made no resistance to any order, and the record is a lie. I was sitting down when my wife interrupted Judge Field, and when he said, "Marshal, remove the woman from the court-room," I rose to take her out. As the marshal came towards me I said, "Don't touch her. I will take her out of the court-room." Marshal Franks yelled out, "I know my business," and grabbing me by the lapels of my coat, tried to force me back into my chair. Two others seized me by the shoulders and forced me down. Again I said, "I will take her out." The men who were bending me back hurt me, and I wrenched myself free and struck at Franks, the blow hitting him in the mouth. I struck at him because he assaulted me without any right or order of the court. By that time they had dragged Mrs. Terry out of the court-room. Then their duty ended. They had obeyed the order brutally. The order was to take her out of the court-room, and she had been taken out. But that was not enough. They dragged her to a room and shut the door. I heard her scream and went to her. I was a free man and she legally a free woman. I had a right to be by her side. They had no order to lock her up or keep me from her. But they barred the door, and to scare them away I drew my knife. I told them I did not want to hurt any of them, but they pulled out their pistols. I could have killed half a dozen of them if I had wanted to. Two of them had pistols pointed at me. Some one said, "Let him in if he will give up his knife." I said, "Certainly," and gave up my knife. They did not take it from me. One of them, a man named Taggart, said in my presence that he would have shot me if I had not stopped. I told him that he would not dare to shoot me, and that if he wanted to shoot he would have a chance. Then he said he did not want to have any trouble with me, and I told him not to brag after it was all over, about what he would have done. The fact is, the court was frightened of something, and had the room full of deputies and fighters of all kinds who wanted a chance to make a showing of bravery, and after it was all over Judge Field lied in the record. I want to get him on the witness-stand to repeat his story, and then we will see if there is any law against perjury.

The court convened at 2 o'clock P. M. of the same day, September 3, 1888. The defendants were not present. All four judges occupied the bench, and Judge Field at once read an order adjudging the defendants guilty of contempt, and directing their imprisonment in the Alameda county jail, Terry for six months, and Mrs. Terry for thirty days. They were placed in that jail by the marshal at seven o'clock on the evening of the same day, and served out their sentences. A petition of Judge Terry just two weeks afterwards for a revocation of the orders of imprisonment, and which he had been influenced

to make by ex-Supreme Judge Heydenfeldt, was denied. It was on the hearing of this petition that the sworn statements of eye-witnesses before referred to, were read.

We give this on the authority of Mr. Wagstaff:

> J. H. O'Brien, of Stockton, an old-time friend, visited Terry in the Alameda jail. Terry said: "When I get out of jail, I will horsewhip Judge Field. He will not dare to come back to California, but the earth is not big enough to hide him from me."

Judge Field was required by law to "come back to California," in the sphere of his high office. These quoted words were from a man, admittedly honest and brave, who "never made idle threats."

Judge Field *did* come back to California, and for the same reason that always brought him—to hold court. Judge Terry's biographer is to be quoted again now, as to the conduct of the defendants after their release from jail:

> On one occasion, as Judge and Mrs. Terry were on their way from Los Angeles, where he had been attending the sessions of the United States Circuit Court, they happened upon the same train which Judge Lorenzo Sawyer was. During the trip Mrs. Terry assaulted Judge Sawyer by pulling his hair. This act was witnessed by one of the Superior Judges of Los Angeles, who was a passenger on the train, and it was reported to the authorities at Washington, and noted in connection with other threats which had been made against Field and Sawyer.
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> * * * *
>
> Letters passed between the United States district attorney and the attorney-general, which finally resulted in an order instructing the United States marshal to provide a body-guard to protect Justice Stephen J. Field during his sojourn on the Pacific Coast from threatened assaults and insults by Judge Terry. *Sufficient evidence had accumulated* (the italics are ours—EDITOR) *to make these precautionary measures necessary*, and the greatest secrecy was observed in order to prevent Terry from being provided with any knowledge of their existence.

Mr. Wagstaff thinks that the authorities ought to have "advised" Judge Terry of what they were about.

The letter of instructions from the attorney-general to the marshal was as follows:

> DEPARTMENT OF JUSTICE,
> WASHINGTON, D. C., April 27, 1889.
>
> JOHN C. FRANKS, U. S. Marshal, San Francisco, Cal.—
>
> SIR: The proceedings which have heretofore been had in connection with the case of Mr. and Mrs. Terry in your United States Circuit Court have become matters of notoriety, and I deem it my duty to call your attention to the propriety of exercising unusual caution in case further proceedings shall be had in that case, for the protection of his honor, Justice Field, or whosoever may be called upon to hear and determine the matter. Of course, I do not know what may be the feelings or purposes of Mr. and Mrs. Terry in the premises, but many things that have happened indicate that violence on their part is not impossible. It is due to the dignity and independence of the court and the character of its Judges that no effort on the part of the government shall be spared to make them feel entirely safe and free from anxiety in the discharge of their duties.
>
> You will understand, of course, that this letter is not for the public, but to put you on your guard. It will be proper for you to show it to the district attorney, if deemed best.
>
> W. H. MILLER, Attorney-General.

Mr. Wagstaff, in speaking of the letter of Attorney-General Miller to Marshal Franks, remarks that the attorney-general was a stranger to the true

character of the man (Terry)—which seems to be an intimation that the official order for Judge Field's protection was hardly necessary. But he adds, in the very next sentence but one, that the attorney-general "was *made aware* of the fact that Terry never made idle threats and was fully aware of the fact that it was his duty to protect the judiciary"; which is a demonstration that in writing his letter to the marshal the attorney-general did just what he ought to have done.

We will let Mr. Wagstaff lead the reader up to the catastrophe:

> Marshal Franks appointed David Neagle a deputy United States marshal, and assigned him to the position of body-guard to Justice Field during his sojourn on the Pacific Coast. Neagle had the reputation of being a rash, brave man, having figured as a hero in Arizona among the "toughs" of that territory who have given it an unenviable notoriety. He had also gained some notoriety in San Francisco among the politicians. He accepted the position and accompanied Justice Field to Los Angeles on the 10th day of August, 1889, where Field held court in connection with Judge Ross. On the 14th of August, Field left Los Angeles for San Francisco with Neagle. As the train passed Fresno, Judge and Mrs. Terry went aboard for the purpose of being present at the hearing of the cases against them in the Circuit Court. They were not aware of the presence of Judge Field on the train, believing he had passed through the day before. The train passed Fresno at 2:30 A. M., and there being no room in the sleeping car, Judge and Mrs. Terry took seats in a regular passenger car. Neagle was on the alert, and saw the Terrys when they took the train. He immediately informed Justice Field of the fact, and when the train arrived at Merced he telegraphed for an officer to be on hand in case trouble should occur.
>
> When Judge Terry was at the depot at Fresno, just before the train arrived, his former partner, W. D. Grady, handed him a pistol, saying, "Take this, Judge; you may need it." "No," said the Judge, "I have no use for a pistol; I never carry one." "Well," said Grady, "I want you to take it; you may need it, for I feel I would never see you again." Terry took the pistol and gave it to his wife, just as they stepped aboard the train.
>
> At Modesto, Sheriff R. B. Purvis took the train, but not at the suggestion of Neagle, or having in his keeping the fact of the presence of the parties upon whom so much anxiety centered. The train stopped at Lathrop for breakfast, and Justice Field, although having been made aware of the presence of Judge and Mrs. Terry, and having been warned by Neagle, who proposed having breakfast served in the buffet, concluded to take breakfast at the station, remarking that he had eaten at the station before, and had gotten a good meal.
>
> Judge Field left the car, and, in company with his body-guard, was taken to a seat at a table near the center of the dining-room, facing toward the door. The dining-room is quite large, having three rows of five tables in each row. Field occupied a chair at the corner of the third table in the middle row, and Neagle next on his left. Soon after they were seated, Judge and Mrs. Terry entered, and the steward showed them to seats at a table at the rear end of the dining-room in the same row. In going to this table they passed down the aisle in front of Judge Field. Terry did not observe Field as he passed, but Mrs. Terry saw him, and, without taking a seat, she spoke to her husband in an undertone, and, turning about, passed out of the dining-room toward the cars.
>
> Observing these movements, T. M. Stackpole, one of the proprietors of the station eating house, knowing all the parties and the bitter feud existing between the Terrys and Justice Field, and also the vindictive and irrepressible character of Mrs. Terry, walked to where Judge Terry was sitting, and said: "Mr. Terry, I hope Mrs. Terry will not be so indiscreet as to create a disturbance in the dining-room."

Judge Terry, who was until this time unconscious of the presence of Justice Field, inquired what he meant.

"Justice Field is in the room," he replied, "and I feared Mrs. Terry would create a disturbance, as she has gone out to the car for some purpose. Do you think she will do so?"

"I think it very likely," replied Terry. "You had better watch her at the door and prevent her from again entering the room."

Mr. Stackpole did as Terry suggested, and placed two men at the door to intercept Mrs. Terry, should she again seek to enter the dining-room, and as he walked to his place at the door leading from the dining-room to the bar-room, Judge Terry arose from his seat and walked toward the door as though he were following his manner was such that no one supposed that he meditated any disturbance, and even Neagle, who was on the alert, did not realize that he was about to make an assault on Field. He passed Neagle, but when he arrived at a point immediately behind Field, he stopped, turned about, and stooping down over him, deliberately struck him on the right cheek with the palm of his hand, and then quickly struck with his left hand, which hit Field on the side of the head. as he had turned his head to look up. Neagle was quick to act, and without rising from his seat, drew his pistol with his left hand, holding the barrel in his right to be sure of his aim, and shot Terry, inflicting a mortal wound.

Judge Terry expired at once.

Nearly four years after Sharon's death, the appeal which he had taken from Judge Sullivan's order denying a new trial, was heard.

On that appeal our State Supreme Court unanimously held against the plaintiff and reversed Judge Sullivan's judgment. Judge Works wrote the opinion. This is to be found in the California Reports, Volume 79, at page 638. The court dwelt particularly upon the letters written by the plaintiff to Sharon, and upon some of her acts—for instance:

After the plaintiff had been expelled from the Grand, and long after she had been denied access to the defendant's room, we find her begging Ki, the defendant's Chinese servant, to admit her to Mr. Sharon's room, her object being to work a charm on the senator by sprinkling a black powder around his chair, putting some white powder in his bottles of liquor, left open on the side-board, and also putting something between the sheets of his bed. For permission to do this, she paid the Chinaman five dollars, and promised him one thousand dollars more, and forty dollars per month for his life, in case she succeeded in working the desired charm on the senator. She desired to repeat these performances in the defendant's room. Ki became alarmed at the possibility of his master's liquor being poisoned; told Mr. Sharon, upon his return home from Belmont next day, what had occurred, and refused to allow the plaintiff to return for the purpose of repeating her powder performances, and thereby perfecting the charm.

* * * *

At one time she secreted herself and saw Sharon and another woman undress and go to bed together in his room, and afterward told it as a laughable joke, and this at a time when she testified she was his wife.

Again, at another time, evidently when she began to think it necessary that she should have some proof of her intimacy with him, she secreted a young girl, not yet twenty years of age, and who seems then to have become a kind of confidante of hers, behind the bureau in his room, to see Sharon and herself go to bed together and hear what was said, and the girl remained there until they had retired and he had fallen asleep, and then crept out of the room.

The defendant testified positively that the relation of husband and wife never existed between him and the plaintiff; that she was his mistress, for which he agreed to and did pay her five hundred dollars a month; that the alleged marriage contract

was never signed by him, and that he never addressed a letter to her as "My Dear Wife," and there was evidence strongly tending to show that the contract and addresses to these letters were forgeries.

* * * *

It seems to us that this evidence shows conclusively that these parties did not live and cohabit together "in the way usual with married people." They did not live or cohabit together at all. They had their separate habitations in different hotels. Her visits to his room and his visits to hers were occasional, and apparently as visitors. They had no common home or dwelling place. This did not constitute a living together or cohabitation. (Yardley's Estate, 75 Pa. St., 207; Ohio vs. Connoway Township, Tapp. 58.) Their acts and conduct were entirely consistent with the meretricious relation of man and mistress, and almost entirely inconsistent with the relation of husband and wife.

This decision of the Supreme Court was rendered on July 17, 1889—about a month before the death of Judge Terry.

On the 10th of March, 1892, Mrs. Terry, the widow of Judge Terry, was adjudged insane by the Superior Court of San Francisco, and was committed to the State Asylum for the Insane at Stockton. She is still a patient at the institution, and her malady, which was at first acute mania, has become chronic.

Upon the going down of the remittitur from the original judgment granting the divorce and from the order granting alimony and counsel fees, the plaintiff obtained judgment in the Superior Court against the executor of William Sharon, for $6,614 alimony, this being according to the modification by the Supreme Court of the original order granting alimony. From this second judgment the Sharon executor took an appeal, upon which the Supreme Court reversed the judgment upon the ground that the decree of the United States Circuit Court, which had first obtained jurisdiction of the parties, was controlling, and that the plaintiff could not enforce her claim of marriage and for property rights incident thereto upon the marriage contract, which had been adjudged by the Circuit Court to be a forgery (84 Cal. 424); so that, as a result of this extraordinary litigation, Mrs. Terry never succeeded in recovering a single cent from William Sharon or his estate.

The effect of the second and last decision of the State Supreme Court, from which we have quoted passages, was to reopen the whole case, so far as the jurisdiction of the State courts was concerned. Sharon had asked for a new trial in the case which Superior Judge Sullivan had decided against him, and a new trial was now granted.

The executor of William Sharon, Frederick W. Sharon, appeared as his representative in the suit, and filed a supplemental answer. The case was tried in the Superior Court, before Judge James M. Shafter, in July, 1890, and on the 4th of August following the Judge filed his findings and conclusions of law as follows:

That the plaintiff and William Sharon, deceased, did not, on the 25th of August, 1880, or at any other time, consent to intermarry or become, by mutual agreement or otherwise, husband and wife; nor did they, thereafter, or at any time, live or cohabit together as husband and wife, or mutually

or otherwise assume marital duties, rights, or obligation; that they did not, on that day or at any other time, in the city and county of San Francisco, or elsewhere, jointly or otherwise, make or sign a declaration of marriage in writing or otherwise; and that the declaration of marriage mentioned in the complaint was false, counterfeited, fabricated, forged and fraudulent, and, therefore, null and void. The conclusion of the court was that the plaintiff and William Sharon were not, on August 25, 1880, and never had been husband and wife, and that the plaintiff had no right or claim, legal or equitable, to any property or share in any property, real or personal, of which William Sharon was the owner or in possession, or which was then or might thereafter be held by the executor of his last will and testament, the defendant, Frederick W. Sharon. Accordingly, judgment was entered for the defendant. An appeal was taken from that judgment to the Supreme Court of California, and on the 5th day of August, 1892, Sarah Althea Terry having become insane pending the appeal, and R. Porter Ashe, Esq., having been appointed and qualified as the general guardian of her person and estate, it was ordered that he be substituted in the case, and that she subsequently appear by him as her guardian. In October following the appeal was dismissed.

(In connection with this article read the closing paragraphs of the sketch of Judge Field.)

——*THE EDITOR.*

THE CALIFORNIA CODE OF LAWS

BY THE EDITOR

The CALIFORNIA CODE *of* LAWS

In 1860, Hon. P. C. Johnson, of Amador, now deceased, introduced into the assembly a bill to "provide for the preparation of a Code of Laws for this State." It did not pass either house.

On January 7th, 1863, Governor Stanford, in his annual message, recommended codification. On December 9th of the same year, Governor Stanford in his second annual message again referred to this subject. He urged "the absolute necessity" of codification, and called for the passage of the law providing for the appointment of a commission to codify the laws.

Attorney-General John G. McCullough, in his official report filed November 6, 1865, argued against any attempt to codify, "unless the best talent be employed."

On April 4, 1870, Governor Haight approved an Act passed at that session for a commission to revise the laws. This had been introduced into the assembly by Hon. T. A. Slicer, of Nevada county.

Creed Haymond has been called "The Father of the Codes" of California. He was chairman of the code commission of this State, and, with his associates prepared the first complete code of laws ever adopted by any State in the Union, or, in fact, by any English-speaking people. The Practice Acts, introduced by Judge Field early in the fifties, were derived from those of New York, but to this day New York has not adopted a civil code. A bill to accomplish this purpose has passed the legislature of that State several times, even as recently as 1888, but in each case a veto has prevented the adoption. Our codes went into effect on January 1, 1873.

There were two other members of the code commission, J. C. Burch and Charles Lindley, the latter of whom resigned his position, but it was well understood that the work, which occupied nearly three years, was almost entirely done by Mr. Haymond, a great part of it being in his own handwriting.

In reply to a political opponent who had depreciated the codes, Mr. Haymond said: "He does me much honor in the assertion that Creed Hay-

mond made the codes. They are the growth of the world's civilization." Incidentally, in the same speech, he gave information as to the adoption of the codes, which should be an interesting part of our State history. "Before their adoption," he said, "the codes were submitted to an advisory board selected by Governors Haight and Booth, consisting of Charles A. Tuttle of Placer, and Sidney L. Johnson of San Francisco. Mr. Tuttle, a lawyer of learning and large experience—the reporter of the decisions of our Supreme Court, (he died in 1887)—was particularly qualified for the position, and gave to the discharge of his duties on the board his undivided attention. Mr. Johnson, a ripe scholar, learned both in the civil and common law, brought to his labors a mind rich in accomplishments, exact and critical. After a careful examination of the work they gave it their unqualified approval and endorsement and heartily recommended its adoption.

The Code of Civil Procedure, and the Civil and Penal Codes, were submitted before their adoption to a joint committee of the two houses of the legislature, composed of W. W. Pendegast, James T. Farley, James Van Ness, A. Comte, Jr., C. G. W. French and F. E. Spencer, who gave to these codes a full examination, and in elaborate reports their approval and indorsement.

An extract from one of these reports is here given:

> "Your committee believe that the system of law embodied in the Codes prepared by the Revision Commission is more perfect than that prepared by any other State; and it would be well for the honor of California if by the action of the present legislature it should adopt this great work, thus setting an example which will be speedily followed by all her sister States, adding new laurels to the fame she has already justly acquired; and at once becoming, as has been remarked, not only a law giver to the thousands within her borders, but to the millions who are to succeed them; and by force of her example, to not only the vast population of the Pacific Coast, but to the millions of citizens of other states who will soon follow in her footsteps. Then, when the laws of all the states in this great federation are harmonious, and in sympathy with each other, California, having made the first advance towards this high aim, will be entitled to the first post of honor and gratitude of the whole country."

Senator Edward Tompkins, who was chairman of the Senate judiciary committee, one of the best lawyers of the State, said, on the passage of the Civil Code, the last of the four to be finished:

> "As there will be no other opportunity, I desire to say a few words in relation to the bill now before the Senate and the work of the commissioners of which this is the final result. Those senators who were here two years ago will remember that I was not an advocate of the organization of the Code Commission. Past experience had taught me to believe that it was a dangerous experiment; and that the chances were that we would have as its fruits large salaries and expenses to pay, and then an added uncertainty rather than any definite rule to aid us afterward in the administration of justice. Having entertained these ideas I have watched the labors of the commission with perhaps more interest, and certainly not with any stronger disposition to be pleased thereby, than would otherwise have been the case; and I desire now, in justice to the Commission and to myself, to say that I was entirely mistaken in the

ideas that I entertained in relation to the organization of the commission, and that on the contrary, I now believe that they have done their work faithfully, wisely and well, and that although there will be errors (doubtless some great ones, as who could do such a work and not leave traces of human infirmity behind them?) yet I believe, as a whole, it is the greatest and best step forward that the State of California has taken toward a perfect system of laws; and therefore, with as much earnestness and sincerity as two years ago I opposed this movement, I now second the motion, that the rules be suspended and the bill passed by the senate without further delay."

Edward Tompkins died in 1872. He had given to the State University real estate worth $50,000 to found the Agassiz professorship of Oriental literature and language—the first private endowment made to this university.

A commission appointed by Governor Booth to examine the work of the code commissioners, consisted of Stephen J. Field, Jackson Temple, and John W. Dwinelle. Their names were suggested by the Judges of the Supreme Court. They spent months in the work, and said:

"We found the four Codes—the Political Code, the Penal Code, the Civil Code, and the Code of Civil Procedure, as prepared by the commissioners, and enacted by the legislature, perfect in their analysis, admirable in their order and arrangments, and furnishing a complete Code of Laws, the first time, we believe, that such a result has been achieved by any of the Anglo-Saxon or British races. It seems inexplicable that those peoples who boast of being the most fully imbued with the sentiment of law, have left their laws in the most confused condition, resting partly on tradition, but for the greater part scattered through thousands of volumes of books of statutes and reports, and thus practically inaccessible to the mass of the people. That California has been the first of this class to enact a complete Code of municipal law, will add, not only to the prosperity of her people, but redound to her honor as a State."

The importance of this great undertaking was even better appreciated abroad than in this State—and by lawyers more than by laymen—just as the height of a mountain is better seen from a distance than from near its base. The distinguished David Dudley Field, whose own labors had especially fitted him to understand the value of the work of the commission, at its completion telegraphed as follows, under date of New York City, March 18, 1872:

To Messrs. Haymond, Burch and Lindley, Revision Commissioners:

All honor to you for your great work accomplished. It will be the boast of California that, first of English speaking states, she has set the example of written laws as the necessary complement of a written constitution for a free people.

DAVID DUDLEY FIELD.

The California Code consists of the Civil Code, Code of Civil Procedure, Penal and Political Codes. The Civil Code contains 3,543 sections, and deals with the rights of persons and of things. The Code of Civil Procedure contains 2,104 sections, and deals with the organization of courts, with judicial and ministerial officers, and practice in the courts of justice of the State. The Penal Code contains 1,614 sections, and defines crimes and punishments, provides for proceedings in criminal cases, and establishes rules for State prisons and jails. For the three codes mentioned, only, were there precedents; for the Political Code there were none. The Political Code com-

prises 4,105 sections, relating to the sovereignty and people of the State, and to the political rights of all its subjects, gives the political divisions of the State, defines the duties of all public officers, establishes election laws, laws relating to education, militia, public institutions, public ways, general police and property of the State, revenues and government of counties, cities and towns. This code, covering almost every matter connected with the life of the State, was passed by both houses of the legislature without reading—an expression of confidence without example in the history of the world. More than a quarter of a century has passed since then, yet the people of California have never found reason to disapprove this action of their representatives.

While the commissioners were engaged in their work, a deputation of Japanese officials visited the State, and on their return took with them copies of the codes, portions of which were afterwards incorporated into the laws of Japan, and form a part of the broad legal and political reform which has culminated in constitutional liberty in that country. Letters of compliment and appreciation were addressed by the Japanese authorities to Mr. Haymond, and his friends remember two large and curiously beautiful porcelain vases, which were sent to him from the royal manufactory as a personal testimonial.

When Creed Haymond died it had been his wish to perfect the code system of California—to take in all the laws which had been enacted since the adoption of the codes, and distribute them where they properly belong and extend their provisions more in detail; to make such a set of codes that henceforth all legislation upon the subjects treated in them should be strictly confined to amendments.

——*THE EDITOR.*

STRANGE STORY OF AN OLD BANK DEPOSIT

BY THE EDITOR

The STRANGE STORY of an OLD BANK DEPOSIT

On the 23d of March, 1893, the legislature of the State of California passed the following law:

SECTION 1. The cashier or secretary of every Savings Bank, Savings and Loan Society, and every institution in which deposits of money are made and interest paid thereon, shall, within fifteen days after the 1st day of December in the year one thousand, eight hundred and ninety-three, and within fifteen days of the 1st day of December of each and every second succeeding year thereafter, return to the Board of Bank Commissioners a sworn statement, showing the amount standing to his credit, the last known place of residence or postoffice address, and the fact of death, if known to said cashier or secretary, of every depositor who shall not have made a deposit therein, nor withdrawn therefrom any part of his deposit, or any part of the interest thereon, for a period of more than ten years next preceding; and the cashiers or secretaries of such savings banks, savings and loan societies and institutions for deposit of savings, shall give notice of these deposits in one or more newspapers published in or nearest to the city, city and county, or town, where such banks are situated, at least once a week, for four successive weeks, the cost of such publication to be paid pro rata out of said unclaimed deposits; provided, however, that this act shall not apply to or affect the deposit made by or in the name of any person known to the said cashier or secretary to be living, or any deposit which, with the accumulations thereon, shall be less than fifty dollars.

SECTION 2. The Board of Bank Commissioners shall incorporate in their subsequent report each return which shall have been made to them, as provided in Section 1 of this act.

SECTION 3. Any cashier or secretary of either of the banking institutions mentioned in Section 1 of this act, neglecting or refusing to make the sworn statement required by said Section 1, shall be guilty of a misdemeanor.

It was believed that the banks would contest the validity of this act, for some of them had successfully resisted all efforts of attorneys-general (notably those of General E. C. Marshall), to make them show their books, in order that the State might recover the escheats to which it might be entitled. But the banks, without exception, promptly published, in December, 1893, the sworn statements called for by the act. A similar law, made applicable to commercial banks, was passed in 1897, and all banks of this class made their first publications in the summer of that year.

It was found, when the savings banks made publication first (December, 1893), that the depositors who had not been heard of for ten years, were numerous; indeed, some of them, and these having the largest sums to their credit, had not been heard from for twenty, twenty-five and even thirty years. To limit the view to San Francisco, the sums unclaimed made a very large aggregate. The amount of money in this category in the "Savings and Loan Society," was $84,000. This is the oldest of our savings banks, and was incorporated on July 23,1857. The Hibernia Savings and Loan Society, incorporated on April 12, 1859, and celebrated the world over for its large number of depositors, reported as unclaimed the sum of $230,984. The San Francisco Savings Union, incorporated on June 18, 1862, disclosed $16,440. The German Savings and Loan Society, which dates from February 10, 1868, had $13,887. The Humboldt Savings and Loan Society, which opened on November 24, 1869, showed a little under $2000. The Security Savings Bank, existing since March 2, 1871, held $1854. The French Savings and Loan Society, incorporated on March 11, 1879, but which held the funds of the old bank of the same name, incorporated on February 1, 1860, presented a great array of names with a very small average, but making a total of $28,000. The Odd Fellows' Savings Bank, which set forth on a promising career, December 1, 1866, and was reorganized on June 24, 1878, and which has been in liquidation since March 1, 1880, reported $13,308.

Here was nearly $400,000. The depositors numbered seven hundred. As nearly all of them had passed away, the heirs interested were many times seven hundred. To employ the language of the London "Academy," in referring to the constant increase of unclaimed money in England, so long ago as 1878, "a curious economic phenomenon," was presented.

The State law of 1893 was most beneficial. At the second publication, in December, 1895, the unclaimed total reported by the Hibernia Bank, although two years of additional deposits had been added, was decreased to $104,000. The other banks showed like decrease. The difference had mostly gone to heirs or escheated to the State. Sometimes an old depositor turned up alive, and occasionally he would identify himself after letters of administration had been issued on his estate; but in no case where a depositor reappeared, had the bank turned over the money to the administrator.

It was in August, 1894, that we began an investigation in the matter of Alexander Smith. On a business visit to Mr. J. D. Sullivan, attorney for the public administrator, our conversation turned upon the subject of unclaimed deposits in savings banks, reports of which had been published by the banks in December, 1893, pursuant to an act of the legislature recently passed.

Mr. Sullivan suggested that as we had met with some success in finding missing heirs, especially the kindred of some of these missing depositors, it might be well to turn our attention to these old bank accounts.

He especially mentioned the case of Alexander Smith, a depositor in the "Savings and Loan Society," to whose credit remained the sum of $17,752,

a far larger amount than was credited to any other depositor in any bank in the State.

We told Mr. Sullivan that we had thought of such an investigation as he suggested, but had abandoned the idea in the belief that many other persons would give or had given themselves to the same work; and that now, after a lapse of eight months since publication, if we undertook to solve the mystery of Smith's long silence, some other person who had started on the same quest before us, would reach the goal first, and our labor would be in vain.

Mr. Sullivan replied that we need have no fears on that score; that many persons had tried to get some trace of Smith or his relations without finding a single clue.

We then determined to begin work in this matter.

The only information disclosed by the published bank report touching Alexander Smith was that when he made his deposit he resided at No. 233 Stevenson Street, San Francisco. We examined the San Francisco city directories from 1850 to 1894, inclusive, and found that the only Alexander Smith who resided at No. 233 Stevenson Street appeared in the directory for 1862, and in no other. His occupation or calling was not stated.

We looked at all the other Smiths in the directory for 1862, and found that one James Smith also lived ("boarded") at No. 233 Stevenson Street. This James Smith was put down as being a clerk in the New York warehouse.

If he continued to live in the city thereafter, he changed his occupation and residence, and we could not trace him.

The directory failed to state who owned the New York warehouse in 1862, or in any other year, and Mr. Asa R. Wells, and other oldtimers of whom we inquired, could not inform us.

We took the directory for 1862 and looked at the name of every person in the book, in the hope of finding some one else who resided at 233 Stevenson Street, in that year, but found none.

We next examined the index of all estates in probate in San Francisco and found none in the name of Alexander Smith. We examined all the mortuary records of San Francisco with like result. We examined, personally and through others, the indexes of all property conveyances of every kind in San Francisco from 1860 to 1880, with like result.

We next waited on Mr. Carmany, cashier of the bank, and asked if he would reveal what his books showed as to Smith's identity. He said they had his signature only. It was the impression at the bank that Smith was a cook, and a single man. We said to him that Smith must have made his deposit in the spring of 1862.

Without looking at his books Mr. Carmany remarked: "Much earlier than that, I think." We observed that if Smith made his deposit as early as 1860, he couldn't have lived at No. 233 Stevenson Street, as that number is now located, because our present system of numbering houses was established in 1861.

At our next interview Mr. Carmany informed us that Smith did make his deposit in the spring of 1862, on March 24th.

The long stretch of time extending since that period left no room to doubt that Smith was dead. We gave ourselves up to an examination of old newspaper files, those of the Herald, the Alta and the Bulletin, in search of "accidents by flood and field." The melancholy story of the destruction of the Pacific Mail steamship "Golden Gate" by fire, on the Mexican coast on Sunday afternoon, July 27, 1862, came before the eye. The names of all the passengers were given. No Alexander Smith appeared, but among the names of steerage passengers lost were: "A. Smith, wife, wife's sister, and four children."

Connected with the long narrative of this disaster in the *Bulletin* of August 7, 1862, appeared brief notices of many persons who had taken passage on the devoted vessel. Among these was the following:

> Among the lost are A. Smith, his wife, wife's sister, and four children of eleven and one-half, ten, seven, and five and one-half years. The circumstances connected with the loss of this family are peculiarly harrowing.
>
> Mr. Smith, an enterprising and well educated Scotchman, came to this State some two years since, from Brooklyn, Long Island, with his household, and having accumulated some property, lost nearly the whole by the last winter's floods. He had made up his mind to return to New York, and the expense of the trip being so heavy for so large a family he offered his eldest daughter, Jane, aged seventeen, who had been some time living in the family of General Ord, in this city, as a nurse or attendant to any lady intending to go east by the "Golden Gate," in which he had himself secured passage. Jane was quickly taken by a lady who, however, was not to leave until the succeeding steamer, August 1st; and it was agreed finally that the girl should wait and go with Mrs. P. and her two children by the "Uncle Sam." The rest of the family sailed and were lost.—*Bulletin*, August 7, 1862, 3d page, 4th column.

We copied this and took it to Mr. H. S. Dalliba, the oldest reporter on the Bulletin, and asked him if he wrote it or knew anything about the facts. He said: "No; that he was not on the Bulletin in 1862." We saw Mr. George K. Fitch, managing editor and part proprietor of the Bulletin, who informed us that the notice of A. Smith and family was written by Dr. Franklin Tuthill, city editor of the Bulletin at that time. Dr. Tuthill died in the East, a few years thereafter. Mr. Fitch himself knew nothing in regard to Smith.

Being impressed with the conviction that this Bulletin notice was a revelation, we told Mr. Carmany about it. He said he had always understood that Smith was a single man. We gave him the date of the sailing of the "Golden Gate" from San Francisco, July 21st, and in return he disclosed the fact that his depositor drew $500 on the 2nd of that month.

The situation was now this: The bank depositor was Alexander Smith; the drowned man was A. Smith. The depositor, Alexander Smith, lived at No. 233 Stevenson Street; the drowned man, A. Smith, had as yet, no discovered residence. It was understood at the bank that Alexander Smith was a single man; A. Smith was a man of large family. It was understood at the bank that Alexander Smith was a cook; A. Smith was an educated man, and while his

occupation was not given in the Bulletin notice, it could hardly be accepted that he was a cook.

We next gave ourselves to the task of discovering, if possible, what was the first name of the drowned man A. Smith, and where he resided in San Francisco before starting on his fatal voyage. If A. Smith resided at any other place than No. 233 Stevenson Street, or if A. stood for Abner, Anson, Andrew, Aminadab, or any other name but Alexander, we had so far been chasing a shadow. We spent several months in the effort to settle this point.

The published list of cabin passengers who sailed on the steamer of August 1, 1862, showed that "Mrs. P." who took Jane Smith with her as nurse, was Mrs. S. S. Phillips. Her name and that (presumably) of her husband appear in a few of the early directories, but it was not possible to trace either of them very far, or to find any one who knew them. The family of General Ord, in which Jane Smith was employed in 1862, is related closely to the families of Mr. S. W. Holladay and Mr. William Craig, well-known lawyers. We waited upon these gentlemen, and inquired if they, or Mrs. Holladay or Mrs. Craig, recollected the girl Jane Smith, or what became of her. They answered "no," (after conference at home). They further said that General Ord had been dead many years, and that his widow had recently died in Texas.

Accepting it as possible that Jane Smith may have returned to San Francisco and married, we examined the marriage registers from 1862 to 1872. The only Jane Smith there found that could have been the object of our search, comparing dates and ages, had become the wife of Mr. P. S. Marshall, who is now in the produce business in San Francisco. Mr. Marshall, in answer to a letter from us, wrote that his wife was not the lady sought for.

We endeavored in various ways to find Jane Smith or some of her kindred. The purpose was to get from them the Christian name of A. Smith, drowned on the "Golden Gate."

We went again over the old newspaper files, including the Sacramento Union, and read the voluminous accounts of the great floods of the winter of 1861-62. The Marysville Appeal was searched by Mr. Geo. A. Morris, its capable editor. We found that the floods had swept nearly every county in the State. Convinced from the Bulletin notice that A. Smith had acquired his property somewhere in the interior, we hoped to see his name in the long list of sufferers by the flood, but it did not appear.

We wrote to the county assessors of the twelve counties most seriously affected by the great flood, inquiring if Smith's name appeared on their assessment rolls in the years 1860, 1861 or 1862. Seven of these replied that they did not find the name. The others did not answer. In addition, Hon. T. E. Jones, Superior Judge of Trinity county, made the examination in that county, and Mr. R. M. Swain, once a lawyer in San Francisco, now of Santa Rosa, performed the same service as to Sonoma county.

We had circulars printed setting forth what had been ascertained about Smith, and offering a reward of $50.00 for information as to where he resided

in California in 1860 or 1861; or where in Scotland he was born, or where his daughter Jane or any relation still lived. These were sent to many "old timers" in San Francisco and the interior, and also to Brooklyn, N. Y.; also to a number of attorneys in those parts, and in Portland, Oregon, and to Mr. Alf. Doten, the widely-known journalist of Virginia City, Nevada. The purpose was to find some one who knew A. Smith, the lost passenger of the "Golden Gate," and possibly secure his signature, or in some way identify him with Alexander Smith, the bank depositor.

In the effort to secure the autograph of A. Smith, the drowned man, among many other things done, was this: A communication was sent to the Pacific Mail Steamship Company, inquiring if their records of 1862 were preserved, and if it was the practice of the company to take the signature of steerage passengers. This reply was returned:

Pacific Mail Steamship Company,
San Francisco, November 21, 1894.

Oscar T. Shuck, Esq., 509 Kearny Street, City:

Dear Sir:—Replying to yours of the 19th instant, our records respecting the passengers who sailed by our S. S. "Golden Gate," lost off the Mexican coast in July, 1862, are not obtainable here. We may remark, however, that the signatures of passengers are not taken, except in certain instances upon the tickets themselves, which in this case were lost with the ship.

Yours truly,
Alex. Center, General Agent.

In all our correspondence on this business, to smooth the way for prompt replies, we enclosed envelopes addressed and stamped. Nearly all of these letters were answered.

Having ascertained that Mr. David Hewes, the well known capitalist, owned in 1862 the property at No. 233 Stevenson Street, we communicated with him. He did us the kindness to call at our office and we had a long talk. Mr. Hewes did not have Smith's signature, or know anything in regard to him, but remembered him dimly. He referred us to others but the result was the same.

Our call at the bank, on which occasion we reported the circumstances attending the death of A. Smith, was in the latter part of August, 1894. Directly afterwards we informed the public administrator that Alexander Smith had made his deposit on March 24, 1862; that he had withdrawn $500 on July 2, 1862; that A. Smith and his family departed on the "Golden Gate" on July 21, 1862, and perished on July 27, 1862; and that Alexander Smith had never been heard from after A. Smith died. Thereupon the public administrator applied for letters of administration upon the estate of Alexander Smith.

We had given the exact time and place of death, but the administrator's petition inadvertently stated that it occurred at San Francisco in 1866, instead of in Mexico in 1862. On the 27th day of August, 1894, the Honorable Judge of Department 10, Walter H. Levy, made an order appointing us attorney for the heirs of the deceased.

On the 4th of September, 1894, an order was made by the same Judge, granting the petition of the public administrator for letters. The order was not actually signed until February 6, 1895, on which day letters were duly issued to that officer, and on the same day the first publication of notice to creditors was duly made.

During the months that had intervened the bank officials steadily refused to admit that it had been established that their depositor was dead.

On the afternoon of Wednesday, the 12th day of December, 1894, we were in the San Francisco Law Library, in the room containing the old newspaper files, pursuing our labors in this matter. Dr. Tuthill's notice of the Smith family again came to mind. The words, "He *offered* his eldest daughter, Jane, as a nurse," challenged attention as they had not done before. The thought came, "Wonder if he did not advertise?"

It was getting dark. We were alone in the room. Mr. Deering, the librarian, came in and said he was going away for a while, but that we could light the gas and remain as long as desired. We replied that we would have to go in ten minutes. He remarked: "Then I will wait for you and lock the door." In about ten minutes we closed the files and left the room. In that ten minutes' time we had found all that we had hoped for. It was a moment "big with fate," as affecting Jane Smith.

A significant advertisement was found in the *Bulletin*, before giving which we beg to say, that if we had not found it then we would have found it never. We would not have gone back to the library the next day. We had made diligent search for some advertisement and would have ended the examination on that line with that day's sitting.

But here is the "ad." then found, from the *Bulletin* of July 16, 1862, second page:

"Wanted—By a young girl, a situation to attend on a family going East by the next steamer. Inquire at No. 233 Stevenson street, between Third and Fourth."

No name was mentioned, but No. 233 Stevenson street was the residence of Alexander Smith, the depositor; and, as already shown, A. Smith when he departed on the "Golden Gate," had "offered" his eldest child, Jane, as a nurse to follow on the next steamer.

"The patient search and vigil long" now ended. The "nail was driven in a sure place," and there was "no loop to hang a doubt on."

For a long time thereafter, by night as well as day, these homely words came to mind: "Inquire at No. 233 Stevenson street," "Inquire at No. 233 Stevenson street."

On the following day we went with Mr. E. F. Cluin, the bookkeeper of the public administrator, to the bank, and handed to Mr. Carmany a copy of the advertisement. He read it silently, with a thoughtful expression on his face, and then said slowly: "And that's where our depositor lived, *wasn't it?*' We remarked, "Yes, Mr. Carmany, this is the missing link." He then

queried: "Now, will he pass it?" By this he meant, as we understood him, would the bank's attorney pass favorably on our showing, as then made out, and direct that the deposit in the name of Alexander Smith be turned over to the public administrator.

It was agreed that we should put the whole case in chronological narrative form, and leave it with Mr. Carmany. This was done the next day, and on that day also we inserted in the *Bulletin*, at an expense of $10.00, the following advertisement, which appeared on December 14th, 17th and 19th, 1894:

HEIRS OF ALEXANDER SMITH.

Jane, sole surviving child of Alexander Smith, or her descendants, will learn of a fortune awaiting them by communicating with the undersigned. This Alexander Smith, a Scotchman, lived at 233 Stevenson street, San Francisco, in 1862. On July 21, 1862, he sailed with his large family on the "Golden Gate," en route for their old home in Brooklyn, N. Y. All perished at the burning of the steamer off the Mexican coast a week later. Jane, the eldest child, went on the next steamer as nurse to Mrs. S. S. Phillips. She is, if living now, about fifty years old. James Smith also lived at 233 Stevenson street with Alexander Smith. He was presumably a relative; and a man of that name also returned to Brooklyn on the steamer with Jane. Anyone rendering material assistance in the effort to find Jane or her kindred will be adequately rewarded.

December 14, 1894. OSCAR T. SHUCK.

509 Kearny St., San Francisco, Attorney for the Heirs of Alexander Smith, Deceased, by Appointment of the Superior Court.

On the evening of the first appearance of this advertisement a *Chronicle* reporter called at our residence and asked to be given the facts in regard to Alexander Smith. As a result of the interview there appeared in the *Chronicle* next morning, December 15, 1894, on page 16, an article over a column in length, entitled, "Hunting for an Heir—A Small Fortune Awaiting Jane Smith."

And so, with the wide circulation of the journal named, this interesting story was read in every community on the Pacific Coast, and probably by many persons in every State of the Union.

We received calls and letters on the subject, including visits from a gentleman and a lady who had known Jane Smith in 1863, but none from Jane Smith herself. We employed the law firm of Reu & Reid, Eagle Building, Brooklyn, N. Y., to make search and inquiry for Jane Smith, or any of the kindred of Alexander Smith in Brooklyn and New York city, requesting them to solicit the kindly offices of the mayors of the two cities, and the newspapers, and to advertise if necessary.

In Christmas week we were informed by Mr. Cluin, before named, that he had, pursuant to our request, again called on Mr. Carmany, and asked if the latter was satisfied with our showing; and that Mr. Carmany replied that he would have some news that would probably settle the matter in a fortnight or so.

About three weeks later Mr. Cluin told us that he had visited Mr. Carmany once more, and the latter had stated that he thought he had found Jane Smith, and that he would know definitely when she had returned to the bank certain affidavits which had been sent on to her to sign.

A day or two thereafter we addressed a letter to Mr. Carmany, telling him what we had learned from Mr. Cluin; further, that we had been appointed by the court as attorney for the heirs of Alexander Smith; thanking him for past courtesy, and asking him to please give us the address of Jane Smith. We told him the lady might not be aware of our authority, nor know what we had accomplished for her, and we hated to see some other attorney reap the fruits of our labors. We desired to communicate with her at once.

After a few days Mr. Carmany replied by letter, asking us to call on Mr. Drown, the bank's attorney. We called at Mr. Drown's office the same day, Saturday, February 2d, 1895, and again on Monday, February 4, but he was not in. We did not make a third visit, because on the morning of the last call we learned that Jane M. Harvey, Mr. Drown being her attorney, had a few days before filed a petition in Department 9 (Judge Coffey) of the Superior Court, for letters of administration upon the estate of the same Alexander Smith, who is referred to throughout this narrative. Therein she appeared as the daughter and sole heir of the said deceased.

She was the Jane Smith for whom we had assiduously searched, and she was now before the court, and was about to come into her long-lost inheritance entirely by our researches and labors.

Of course, we might have kept secret all knowledge acquired until Jane Smith had learned the truth from our own lips and had contracted with us for our proper compensation; but we told the public administrator and the bank of developments, as they occurred.

In his petition Mr. Drown gave the death of Alexander Smith as having occurred at the very time and place reported by us. Mr. Drown was not aware that the public administrator, Captain A. C. Freese, had obtained letters of administration on the estate. It was shortly agreed that the latter should administer, and Mrs. Harvey withdrew her petition for letters. She had, in 1862, as Jane Smith, the nurse girl, gone to New York, and from there went to relatives in Scotland. There she married, and was now settled with her husband and grown sons, in Denver, Colorado. It was in Denver that she read an Associated Press dispatch, which was published all over the English-speaking world, telling of the discovery of this estate. She came on and established her identity with Jane Smith, Alexander's daughter. Her brother, James, could not be traced later than 1875, when he was in Pioche, Nevada. He was not the James Smith who went East on the steamer. We had advertised for him in every county of Nevada, and all over the Great West. His disappearance lends a new mystery to the family history. The whole estate was awarded to Mrs. Harvey—less the fees and charges, which were very heavy.

Alexander Smith had left in bank in 1862 about $1500. This had grown to $17,752 in 1893. Pending our investigation, and the administration proceedings, accruing interest added over $2700. The amount at the final distribution in 1896, was $20,500. Our own allowance, for the services herein spoken of, as fixed by the court, with Mrs. Harvey's approval, was $3000. The fees of the other attorneys and the public administrator's commissions, probably aggregated as much more.

Our residence was in San Francisco in the now distant period when the Smith family lived at No. 233 Stevenson street, and we used to pass by their door without, of course, having any knowledge of the occupants. Our long investigation above detailed, brought a sense of old acquaintance, and it seemed almost that we knew every member of the household. The figure of the little girl, especially, would repeatedly come into the field of fancy, and we would question if indeed we had not seen her at play in front of the happy home that was to have so sudden and so sad a doom.

But the story is told. A sadder one (that of the missing brother James) sadder, indeed, if certain gathered knowledge proclaims the man, may call for narration at another time.

——*THE EDITOR.*

GREAT BRODERICK WILL CASE

BY THE EDITOR

The GREAT BRODERICK WILL CASE

The estate of Senator Broderick, who fell in a duel with Judge David S. Terry, in 1859, was administered upon in San Francisco. Before proceedings ended they had engaged the attention of nearly every court of record in the city, the Supreme Court of the State, and lastly the Supreme Court of the United States. No heirs being known and no will being discovered, on September 21, 1859, General D. D. Colton, one of Broderick's seconds, who was a creditor, applied to the Probate Court for letters of administration upon the estate, but the next day Lewis P. Sage, the public administrator, made a like application pending the contest. The court, on December 14th following, appointed David P. Belknap special administrator. Mr. Belknap had charge of the estate for some ten months, when a paper was filed, purporting to be the last will and testament of the deceased, and pursuant to its provisions, letters testamentary were issued on October 20, 1860, to John A. McGlynn and A. J. Butler. The latter was a resident of New York city, and McGlynn acted as sole executor throughout.

The alleged will was dated New York city, January 2, 1859 (Sunday). It was very brief, directing that, after all debts were paid, his friend McGlynn should receive $10,000, and "all the rest and residue of my estate, both real and personal, I give and bequeath to my friend, George Wilkes, of the city of New York." Wilkes, McGlynn and Butler were nominated as executors, to give bonds.

The estate consisted almost wholly of real estate in the central part of San Francisco, and was appraised at $242,896.79—a very large estate for that day. The personalty consisted of $6409.59 in money, some gold specimens worth $571.20, and in his box at the bankers' (John Sime & Co.), was the shattered gold watch that was the means of saving his life in the duel with Judge Smith. It was presented to him by the Howard Engine Company, of New York city, on the eve of his departure for California.

On September 30, 1861, John McDonald, Mrs. John Howard and Mrs. Philip Fogarty filed a petition setting up that they were next of kin of

deceased, declaring that the alleged will was a forgery, and asking that the order of court admitting it to probate be revoked. These parties did not press their application very far, and soon came to acquiesce in the proceedings and sale of the realty.

On November 29, 1861, the attorney-general, Thomas H. Williams, on behalf of the State, and on the relation of Frank M. Pixley, Esq., attorney-general-elect, but not yet in office, filed in the Fourth District Court an information alleging that Broderick had died intestate, and without heirs, and that his estate had escheated to the State of California. On the same day he commenced, in the same court, a suit in equity to obtain an injunction against the sale of the estate by McGlynn and Butler. A temporary restraining order was issued pending the information.

On the hearing it was claimed by the plaintiff that the forgery was accomplished after this manner: Butler, who was in this State when Broderick died and afterwards, conceived the job, and, going to New York, confederated with Moses E. Flanagan, James R. Maloney, George Wilkes, John J. Hoff and Alfred A. Phillips. Flanagan, who had been in the habit of using, by consent, Broderick's senatorial frank, wrote simulated signatures on several sheets of paper. Phillips wrote the will above one of those signatures, and he and Hoff signed their names as witnesses. It was not disclosed where the alleged will was discovered.

McGlynn, who was not charged with the forgery, was the only defendant who appeared. He denied, on information and belief, all the allegations of the complaint. His defense was that the will was genuine, and that the decree of the Probate Court admitting the document to probate was final and conclusive, and could not be questioned by any other court, under the statute which provided that, after the lapse of one year from the probate of a will the probate shall be conclusive.

Judge Hager held that this statute did not preclude courts of equity from setting aside wills, the probate of which had been procured by fraud. He said:

> It seems like an anomaly in law that by any course of reasoning, based on principle and legal authority, we should attempt to establish the validity of a forged will, which is of itself a nullity, or of its probate, procured by fraud and perjury; and if sucessfully done, I fear it would be a reflection upon our institutions and a stain upon our jurisprudence. It is urged that equity will not interfere, even if it be established that the will is a forgery, and its probate procured by fraud and perjury. If this be sound in principle and supported by authority, we deduce a controlling principle of law to the following effect: That if a person successfully consummates the forgery of a will, and by fraud and perjury gets it admitted to probate, and for one year thereafter conceals the evidence of his crime, he may acquire an estate. If the legal heir be absent from the country, and does not know or hear of the death of his relative during the year following the probate, for the same reason he must lose his inheritance. The forger might be punished for the public offense, but he would hold the estate, and the heir would lose it. Public justice might be vindicated, but the inheritance would be despoiled, and our courts would be inadequate to grant relief.

Such a principle would seem to be in violation of natural justice, absolute rights and public policy. I am not able to understand why a forged will should be placed upon any footing different from a forged deed.

Having declared that the only satisfactory evidence in the case was that evinced by the will itself, Judge Hager proceeded:

An inspection of the will discloses to the senses some peculiar phenomena, and many remarkable visible signs that are suggestive and circumstantially strong, against the probable truth of some of the defendant's evidence. It is manifest to the eye that, in the signature "D. C. Broderick," and in the words "John J. Hoff, 131 and 133 Washington street, Hoboken, N. J.," the ink of the one is of a darker tint than that of the other, and that both are much darker hued than the writing composing the body of the document and the certificate of attestation. In the last mentioned instance it is so demonstrable, upon mere inspection that I can hardly suppose the entire document and signatures were written on the same occasion, at the same table, and with the same ink, as we are led to infer was the case from the testimony of Phillips and Hoff.

The will consists of one sheet of letter paper; the signature is on the third line of the second page, and is succeeded by the certificate of the subscribing witnesses.

The body of the will contains twenty-one lines of manuscript. Of these eighteen are entire lines, wthout interlineation. As the lines approximate the signature the letters become gradually and very perceptibly smaller, and the words are more condensed and crowded, and in the last line a few of the words are carried beyond the marginal line, which is the only instance where it occurs, either in the body of the will or the certificate. These phenomena, so remarkable and extraordinary, apparent on the face of the will, and established in some respects with the certainty of a mathematical demonstration, are unexplained, and, in view of the evidence, cannot upon any reasonable hypothesis be attributed to chance or accident. The ordinary manuscript of a scrivner would scarcely ever exhibit such marked peculiarities. If, however, as some of the evidence tends to indicate, the name D. C. Broderick was first written, and that alleged signature and the initial line on the first page formed a Procrustean bed, in which the body of this alleged will was placed and made to conform to it, we have a solution.

The Judge ordered the injunction issued as prayed for. McGlynn appealed, and a memorable argument followed before the Supreme Court. Messrs. Hoge and Wilson represented the appellant, and succeeded in upholding the will. Judge Hager's injunction was dissolved. James B. Haggin represented the self-declared heirs-at-law, and Gregory Yale fought like a Titan for the lost cause. The following vigorous extract is from Yale's brief:

The great effort is now and always has been since the accidental probate of this felonious paper, to take shelter behind a formal decree legalizing the felonious act. Will or no will, when propounded for probate it is claimed that it became an immaculate testament when solemnized by certain forms. Broderick may not have made a will, but Butler, with his co-conspirators, has secured the probate judge's name, if not D. C. Broderick's, to the paper, and no human power can detach it. This is the doctrine that this court is called upon to sanction. Years and generations hence, the term of 1862 is to be signalized—as the forgers and speculators would decree it—as an epoch in the legal history of this great State, when its highest tribunal pronounced in favor of an unmiti-

gated fraud, only because an inferior tribunal had sanctioned it, and because the law afforded no escape from its own machinations. Such reflections upon the law are unwarrantable, unworthy of any civilized code, and humiliating to listen to.

The Supreme Court refused to interfere with the probate of the will, on the ground that the decree of the Probate Court (M. C. Blake, Judge), was final and conclusive, the statutory period of one year having elapsed since its probate, and not subject, except on an appeal to a higher court, to be questioned in any other court, or be set aside or vacated by a court of equity on any ground. (20 Cal., 234.)

The estate was accordingly sold, and distributed in pursuance of the terms of the "will"!

On April 20, 1870, was filed another petition for the revocation of the probate of the alleged will, the petitioners being Ann Wilson and Ellen Lynch, alleging the paper was a forged one and declaring themselves to be the daughters of Catherine, only sister of Broderick's father, and residents of Australia. In October, 1872, the court dismissed the petition on the ground that it was barred by the statute, not having been filed within one year after the alleged will was probated. Mrs. Lynch, who was a widow, and Mrs. Wilson, and another sister, Mrs. John Keiley, the husbands of the last two joining, had already commenced suit in equity in the United States Circuit Court in San Francisco, against McGlynn and the several hundred holders of the realty under the sales. A demurrer was filed to this petition, which the Circuit Court sustained. The petitioners appealed to the Supreme Court of the United States. Thereafter the Supreme Court of the United States rendered a majority opinion affirming the judgment of the Circuit Court.

In that highest tribunal the defeated claimants were represented by I. T. Williams and S. H. Phillips. Samuel M. Wilson, of San Francisco, was alone on the prevailing side. He argued that a court of equity had no jurisdiction of the subject matter of the suit, the same being vested exclusively in the San Francisco Probate Court, and that the action was barred by the several California statutes of limitation. He made other contentions, but upon those just mentioned the case was then finally determined.

It might here be remarked that, in public estimation, the so-called Broderick will has long since been pronounced a forgery; and in the history of enlightened jurisprudence, it stands as a solitary instance where a will alleged to be forged has been upheld because courts exercising equity jurisdiction were inadequate to give relief, even if the fraud should be established by proof.

——*THE EDITOR.*

HORACE HAWES WILL CASE

BY THE EDITOR

The HORACE HAWES WILL CASE

Horace Hawes, eccentric lawyer, but useful legislator, author of the Consolidation Bill, which in 1856 made the City of San Francisco and the County of San Francisco one body politic and corporate, came to California long before the gold-seekers—so early as April 4, 1847. He was prefect, or chief executive officer, of the San Francisco district, 1849-50. He was an assemblyman in 1856; a State senator, 1863-64, and 1865-66; author, in addition to the Consolidation Act of 1856, of the Registry Law and the act creating the present Justices' Court of San Francisco, in 1866. He was born in New York in 1813, and died in San Francisco, March 12, 1871.

While holding the office of prefect, Hawes had a rupture with Governor Peter H. Burnett as to the best way of dealing with the town council of San Francisco, which claimed the absolute right to sell a large number of building lots owned by the city. The council had sold many lots, some of the members purchasing at the sales. Hawes in a proclamation expressly charged that "The members were both the sellers and the buyers." Governor Burnett suspended further sales "until the legislature should pass some act in reference to said lands."

The Governor suspended Hawes, who on April 4, 1850, petitioned the lower branch of the legislature to impeach the Governor for usurpation of powers. The petition was presented to the assembly by Speaker John Bigler, at whose suggestion it was laid on the table; and it was never acted on. Hawes was perfectly honest in the controversy, and manifested great legal ability. This early episode in our history furnishes very engaging reading. (See Appendix to Proceedings of the Town Council of 1849-50.)

Hawes, whether insane or not, made a judicious will, which would, if sustained, have kept his family in comfort all their lives, and would probably have lengthened their lives. He bequeathed to his widow $2500 per annum; to his only son, Horace, $3600 per annum; to his only daughter, Caroline, $3000 per annum; to his errand boy, Thomas E. Larkin, $500; to his sister, Lydia, wife of Russell Martin, certain lands and a mortgage in Buffalo,

New York; to Mrs. Mary Hawes, widow of Rev. Lawrence Hawes, $6000; and to Henry Ultman, banker, of Racine, Wisconsin, $6000 to be distributed to two brothers of testator, John and Isaac Hawes, and an aged aunt, "and other aged near relatives, if any there be to his knowledge who need it." The whole of his handsome estate, with the exception of the few legacies just mentioned, he bequeathed to two institutions which he hoped to create, but which were never called into being—the Chamber of Industry to be at San Francisco, and the Mont Eagle University in San Mateo county. Albert Hart, first librarian of the San Francisco Law Library, was named as executor, with Edward R. Sherburne as alternate, and the will was witnessed by Stillman N. Putnam and Alfred Clark. It was filed for probate April 11, 1871. The estate was appraised at $401,000.00.

There was one provision of the will that was carried out. Mrs. Hawes, after she had received letters of administration, erected over his grave in Laurel Hill, San Francisco, a block of red granite from Scotland, six and a half feet long, two and a half feet wide, and ten inches thick. It bears, by his request, in addition to the usual inscription, the words, "Author of the Consolidation Act and the Registry Law."

The will also directed that, after the lapse of one hundred years, the granite slab should be replaced by a monument.

Who will do this? Nearly a third of the century has now passed!

On May 9, 1871, the widow, by General Barnes, J. C. Bates, and Alexander Campbell, filed a petition in contest of probate, based on the grounds: (1) that the instrument offered was not the last will of the deceased; (2) that Horace Hawes was not of sound and disposing mind, and was a person *non compos mentis* when the document was signed and long prior thereto; (3) that the document was not signed or attested as required by law, and (4) that if the alleged will was signed by Hawes, it was signed under restraint, undue influence and fraudulent misrepresentations.

The trial of this case opened November 14, 1871, and lasted two weeks.

Some ten or twelve attorneys appeared, but General Barnes was the principal counsel for the widow, while ex-Judge L. E. Pratt, afterwards district attorney, was his chief opponent. The proceedings on the trial were reported in full and printed, making an octavo volume of 600 pages. Fifty-five witnesses were examined, many of them at great length. This great contest was watched with interest by the people of the whole Pacific Coast. The following short extract from General Barnes' speech to the jury will give a glimpse of the character of the man whose will he was opposing on behalf of a worthy widow:

> Think of a man in his senses telling a witness to take a book and write down in it every word he said; that after his death it would be published, and a hundred years hence it would be read by more people, and with greater interest than the life and doings of Jesus Christ." Think of a man whose insane idea on the subject of his own greatness was such that when he read an account of a public meeting, and of a dinner where His Excellency the Governor of the

State presided, and where the gentlemen drank each other's health, and toasted everybody, he lay the newspaper down and said, 'Neither Jesus Christ nor I was ever toasted.' Gentlemen, I hope that Mr. Hawes was an insane man, for if he was not, if all these acts and doings of his were the product of a sane mind, whatever complaint he may have made on the subject of not having been toasted on earth, he is getting plenty of it now.

The jury were not long in agreeing upon a verdict for the contesting widow. The latter paid to General Barnes a fee of $30,000.

On the 24th day of February, 1871, a fortnight before his death, Hawes executed a deed of real estate to Horatio Stebbins, the eminent Unitarian divine, and to Horace Davis, J. W. Britton, George H. Howard, and Edward P. Evans, in trust, for the establishment and maintenance of an institution for the diffusion of knowledge, to be called the "Mont Eagle University." In this deed Hawes reserved to himself an estate, coupled with the possession and the rents to continue for and during his natural life."

Upon his death the grantors in trust took possession of the property.

Mrs. Hawes sued them in the old Twelfth District Court, San Francisco, to recover the property. She obtained judgment, upon a demurrer to the answer, and the Supreme Court were of one mind in sustaining the lower court, except that Justice McKinstry did not take part in the decision. The court, by Justice A. L. Rhodes, held that in this State, following the common law of England, an estate of freehold cannot be granted to commence *in futuro* without the creation at the same time of a particular estate, which vests the immediate estate in some other person; that a deed which conveys an estate of freehold to commence upon the death of the grantor, but reserves to the grantor the use, enjoyment and possession of the property, during his natural life, is void.

Horace Hawes, Jr., the only son of Horace Hawes, was defeated by Hon. William T. Wallace for the assembly in the fall of 1882. He died at Redwood City, December 19, 1884, leaving to his widow and two children an estate worth $200,000.

Mrs. Hawes died at Redwood City in August, 1895. A writer of the time, while representing her as a kind, loving and gentle woman, said that she had spent her portion of the estate with a prodigality seldom excelled. We quote:

Young Horace, of whom his father had expected so much, was given large sums to spend at an age when he should have been in school. Early in his life his mother conceived the idea that Horace, Jr., should tour the world. which he did at an enormous expense, the Rev. H. E. Jewett traveling as his companion. When he returned his mother spent $25,000 in purchasing him a seat in the San Francisco Stock Exchange. So the money went until there was nothing left for her own use.

Horace married the sister of the wife of Timothy Guy Phelps when he was only a boy. His wife was several years his senior. Horace had inherited some of his father's talent, but he never applied himself, and consequently entered no profession. When only 23 he conceived the idea that he would like to go to congress, but failing to secure the nomination he solaced himself

later on by accepting the nomination for the State assembly. In this political campaign he exerted all the energy of his nature, but met defeat. His failure was an awful blow, and a very few days after the returns came in he was in bed with a deadly fever upon him. He lived only a short time, and even when the shadow of death was upon him he wept over what he termed the ingratitude of the companions of his boyhood, who had voted against him.

His widow soon after his death married J. B. Schroeder.

Caroline Hawes, the young and beautiful daughter, had a handsome dowry, after the will was broken, and when she was 18 she married James A. Robinson, the son of a distinguished pioneer. Shortly after his marriage he bought into the tea firm of Macondray & Co., and has prospered there ever since. Mr. and Mrs. James A. Robinson are prominent members of the 400 in San Francisco.

After Mrs. Hawes had spent all of her wealth on her children and her friends she made the Robinson country seat at Redwood City her home. The change in her fortune never made her downcast. She seemed quite as happy in poverty, surrounded by her sweet-faced grand-children, as she ever had been while mistress of the big Hawes mansion, which came to be the property of Mrs. Moses Hopkins.

——*THE EDITOR.*

LEGAL EDUCATION IN THE STATE UNIVERSITY

BY GUSTAV GUTSCH

Gustav Gutsch

LEGAL EDUCATION *in the* STATE UNIVERSITY

As an important factor in the development of the law of this State, the University of California demands special consideration.

Hastings Law College had existed since 1878, and attained great influence under such able lawyers and teachers as John Norton Pomeroy, Charles W. Slack, Elisha W. McKinstry and others. But it was felt that in modern life, and particularly in this country, where every citizen takes more or less of an active part in the government of states and municipalities and in the enactment and application of the laws, the study of jurisprudence, at least in its general principles, should not be left to those alone who wish to make the law their profession, or to any particular class such as is still found in other countries, for instance in England, but that it should, and in the course of time *must*, form part of the education of every well-bred man; for as the light of intelligence and knowledge spreads and extends to the great mass of the voters, it is evident that a government which is to satisfy the entire people must and ultimately will be entrusted to those educated and intelligent citizens who are able to understand the wants of the different callings, occupations, professions or trades, and to do justice to everybody. This cannot be accomplished by any special class of men trained in the law; for the exclusiveness of a purely legal education unfits them, unaided, for a task of such scope and magnitude; and yet, as the law pervades every part of our political life, it will be necessary for every one, without exception, participating in the proposing, framing, enacting or applying of our laws, to fully and clearly comprehend at least the general principles underlying those laws. Moreover, he should have a fair knowledge of the history of this country, and perhaps of other countries, for historical experience is one of the best tests of sound legislation; and the history of the civilized nations of modern times—which becomes more and more important as compared with the history of antiquity—is not, as history was formerly, an account of wars and conquests or the succession of rulers, but a description of the inner progress and of the peculiar manners, customs

and laws of each people, together with a comparison of the practical effects thereof shown in each case.

These and similar ideas led to a desire to embody in the general courses of a higher education attainable in our State University an instruction in the history and principles of the law which would be accessible to such of the students as were not able or, for any reason, did not wish to follow the lectures at the Hastings College, and also to those, who, before entering upon the more special and exclusive study of the law, might choose to complete their education in other departments of university knowledge.

The development of a school of jurisprudence has been in the mind of Mr. William Carey Jones since 1882, when he was appointed instructor in United States history and constitutional law. In the same year he began a course on Roman law. A year or two later he undertook a more comprehensive course in jurisprudence, using Holland's text-book. In 1891 he introduced International Law. By 1892 he had succeeded in bringing into the university curriculum courses in Roman Law, International Law, Constitutional Law and the Principles of Jurisprudence. During the year 1892-93 he was given a leave of absence for study in Europe, having justified the existence and development of legal study in the academic colleges. In recognition of his work and of the value of such a department, the regents in 1894 gave Professor Jones the official title of professor of jurisprudence, and he became the head of what has developed into a new and independent department.

Through the untiring and energetic efforts of Professor Jones and the popularity of his courses, the number of students in the new department grew very rapidly; and in 1898 it was resolved by the regents that graduates of the university who had satisfactorily passed certain courses, embracing the most important principles of the laws of real property, contracts, torts and crimes, as well as the history of common law, should, on the recommendation of the Department of Jurisprudence, be admitted to the middle class of the Hastings Law College, thereby shortening their regular term at the latter school by one year.

Following out the original idea which led to the organization of the new department, Professor Jones, in conjunction with the board of regents, endeavored to give variety and at the same time a more universal scope to the study by interesting others in the plan. Among those who seemed best qualified to carry the same into further practical execution was Mr. Louis T. Hengstler, then assistant professor of mathematics at the university and assistant professor of law in the Hastings College. The descendant of a family of lawyers in Germany, Mr. Hengstler had received his university education in that country. Not long after his arrival in California, in 1886, he was admitted to the bar by the Supreme Court and for several years was engaged in the practice of law at San Francisco. Being a mathematician, however, as well as a lawyer, he accepted a call to the University of California, which at first caused him to devote his entire attention to mathematics. But his love of the

law could not be thus extinguished, and having, for a while, divided his time between the mathematical department of the university and the Hastings College of the Law at San Francisco, he was, in 1898, at his own request, assigned to the new department, with the official title of assistant professor of jurisprudence, and given charge of the courses on elementary law, criminal law, torts, and on public and private international law. Next to Professor Jones himself, the success of the latter's enterprise is mainly due to Professor Hengstler's good judgment and industry.

The number of students availing themselves of the opportunity for widening their general and special knowledge grew steadily, until it passed the number of 300, enrolled in the various courses. New teachers were then sought and found. Curtis H. Lindley and Gustav Gutsch, both members of the San Francisco bar, were prevailed on to give weekly lectures at Berkeley. Their engagement was "honorary." Mr. Lindley (the author of the famous work on mines) chose for his principal subjects the public land system, the methods by which the government acquires and disposes of its lands, and the genesis, development and theories of the law of mines, and the law of water as applied in Western America; and Mr. Gutsch illustrated the idea that nothing is more conducive to a full and critical understanding of our own laws than a comparison wth the principles and development of foreign laws by engaging his listeners in a close study of the history of modern European codification and in a comparison of the leading principles of domestic and foreign procedure.

With the interest in the new department shown on all sides, the latter is certain to make its influence felt and to aid most materially in raising the scientific standard of the profession throughout the State.

——*GUSTAV GUTSCH.*

San Francisco, Cal.

THE FIELD OF HONOR

BY THE EDITOR

The FIELD *of* HONOR

JAMES W. DENVER AND EDWARD GILBERT AND THEIR FATAL DUEL IN 1852

This fatal meeting took place as early as August 2, 1852. It was the most notable duel that occurred in California prior to that between Johnston and Ferguson, in August, 1858. Truman's "Field of Honor" does not give the date, but the account there found is nearly correct. This duel caused more sensation and sorrow throughout the State than any other before or since, excepting that of Terry and Broderick in 1859. Like all the single combats that threw the State into alarm, it was between leaders of opposing political parties.

We will reproduce, first, Major Truman's narration:

> A description of the fatal meeting between Hon. Edward Gilbert (at the time editor-in-chief of the *Daily Alta California*) and General James W. Denver (then secretary of State of California) is presented as one of the most dramatic and conspicuous affairs of this character. The legislature of California, at its session of 1852, had passed a bill to provide for the sending of relief to overland emigrants who might be in a destitute condition, or exposed to danger from hostile Indians. This bill required the governor, who had made the recommendation to the legislature, to raise a company and supply trains sufficient to meet the necessities which might exist during the season. The governor had obeyed these instructions, and had marched in front of the train through the capital of the State as it was setting out upon its humane expedition. Mr. Gilbert vigorously opposed this whole measure, frankly stating that he believed the movement was designed for the purpose of making political capital, and that it would be a heavy expense to the State, and render little aid to the emigrants. When the press announced the departure of the supply train, and complimented the governor, who escorted it out of Sacramento, Mr. Gilbert ridiculed the parade and the show that was made about it, and intimated that the whole thing was projected to increase the governor's popularity. General Denver, who was connected with the relief train, and who was a personal friend of Governor Bigler, replied to Mr. Gilbert's articles by publishing a card, in which he made use of unmistakably discourteous language. Mr. Gilbert replied, and General Denver retorted. A challenge was immediately sent to General Denver, and accepted, and rifles selected as weapons. Mr. Gilbert fell at the second shot and

expired in less than five minutes. The victim was a native of Albany, New York, and was a member of the convention to form the constitution for the State of California, and immediately after her admission into the Union was chosen a representative to congress. He was only thirty-three years of age at the time of his death, had been a pioneer of the daily press of San Francisco, and was an earnest if not brilliant writer. The author has carefully perused a great many accounts of this melancholy affair, which agree, in the main, with the foregoing. In 1880, General Denver's name was mentioned in connection with the Democratic nomination for the presidency, which prompted the New York Herald to reproduce a description of this episode in Denver's life, which it is presumed should or would handicap Denver for such eminent preferment. This article was replied to by Mr. W. A. Cornwall, of San Francisco, as follows, in a communication to that paper:

"The San Francisco Bulletin republished an article from the Herald, in which General James W. Denver is mentioned as an eligible candidate for the presidency. In it reference is made to the fact that at the time Denver was secretary of State of California, he engaged in a duel with Edward Gilbert, who was then editor of the *Alta California*. The article is prejudicial, because it does not detail the circumstances connected with that fact and the deplorable duel. The incident of which it was the result was an article published in the *Alta-California* respecting a family named Donner, which perished en route in its attempt to emigrate overland to California in 1850.* The State, learning of the distress of the emigrants, provided means for their relief; and the duty of dispensing it was delegated to the secretary of State. This was prompt and humane, but it was bitterly criticised and sharply assailed by Gilbert. Denver is a clear-headed, sound man, sensitive and brave. He retorted, and his retort was terrible. Gilbert, who was a member of Colonel Stevenson's New York regiment, challenged Denver, and the parties went upon the field. The weapons were rifles, at short range; and I assert, as a witness, that no man in the tide of all the centuries, ever displayed a more dauntless temper than Denver. He knew that Gilbert was a brave soldier, and that he was reckoned to be a deadly shot. Nevertheless, Denver reserved his fire, and purposely threw away his own. Happily, Denver escaped untouched. Every effort was then made by the seconds and by mutual friends for peace; Gilbert was informed that his antagonist wished to clasp hands, but Gilbert refused the request in terms which showed his friends that he had determined to kill Denver. The principals returned to their positions.

"Now," said Denver, in a tone I shall never forget, "I must defend myself." And at the word Gilbert fell, pierced through the heart.

"I assert that no man more than Denver disdains this deadly mode of arbitration, but Washington himself would have defended his own life. He offered it, like Denver, to his country. He would have defended it as a trust and legacy from the Creator. He was an impersonation of the great thought, *Dulce et decorum est pro patria mori.*"

In 1884, General Denver's name was again mentioned in connection with the Presidential nomination, and Judge Edward McGowan, on the 17th of April, 1884, wrote as follows from Washington to the San Francisco *Evening Post*:

"In my obituary notice of the late Judge McCorkle I inadvertently referred to the duel between General James W. Denver, now a resident of this city, and

* The year was 1852; and it was not the Donner party. Their year was as early as 1847, and they did not *all* perish. See our sketches of William G. Murphy and Judge James F. Breen.—*EDITOR.*

Edward Gilbert, founder of the *Alta California* of your city, which took place over thirty years ago at "The Oaks," forty miles from Sacramento.* General Denver will be a candidate for President before the Democratic National Convention, which will meet in Chicago on the 8th of July, and the old story of censure, which was cast upon him by the anti-duellists and the friends of Mr. Gilbert at the time the affair came off, has been revived in certain circles in this city to his great detriment, although he was not altogether to blame for the taking off of Mr. Gilbert, as every opportunity was afforded Gilbert's friends by the friends of General Denver for a settlement of the difficulty without a further resort to arms, after one shot had been exchanged between the parties without either being hit. At the time of the duel General Denver was secretary of State, under the administration of the late Governor John Bigler. The meeting was caused by a severe article in the *Alta California*, an opposition press, criticising the conduct of the governor in appointing General Denver to the head of the expedition over the mountains for the relief of the emigrants. This was at the time a position of the most difficult and responsible character. Denver replied to these strictures of the *Alta* in pretty severe terms, and Mr. Gilbert, being the responsible editor, sent a challenge. General Denver threw his first shot away—being an expert with the rifle, although his opponent was no novice in the use of firearms. After the first fire a proposition was made by the friends of the challenged party to adjust the affair. This the friends of Mr. Gilbert refused to assent to. General Denver then threw off his coat and took his position, making a remark to one of his friends—Dr. Wake Brierly—about "not standing here all day to be shot at." At the second fire Mr. Gilbert fell dead—pierced through the heart by a bullet from his opponent's rifle. Mr. Gilbert himself would not agree to a settlement, fearing he would be compromised. He had had a previous difficulty with John Nugent, editor of the San Francisco *Herald*, and the affair was adjusted without resorting to the field of honor, and it was reported that Mr. Nugent had the best of the settlement. If this were true, it was a wrong settlement. All adjustments of affairs of honor should be made without casting a shadow of doubt upon the standing of either party as a gentleman and man of courage. General Denver was elected to congress from California, serving in that body in the year 1855-6. His colleague was Colonel Philemon T. Herbert, who since received his death-wound at the battle of Mansfield, Texas, while in command of the Seventh Texas. Denver was also appointed governor of the territory of Kansas, by President Buchanan, during 'border-ruffian' days. His predecessors during the contests of the free-state and pro-slavery men for the supremacy in that territory in those bloody days of that internecine strife, were Robert J. Walker, Edwin M. Stanton, Colonel John W. Geary, first mayor of San Francisco, and Wilson Shannon, afterward a resident of California. All of these men had wrought faithfully, in vain, in the work of pacification, and had either thrown up the task in despair, or had been removed by the President for inefficiency. While governor of Kansas, Denver held the respect of the free-state men; and the late Albert D. Richardson speaks of him in his well known work, 'Beyond the Mississippi.' He says: 'Though a Buchanan Democrat, Denver proved more fair and just than any previous governor of Kansas. During the rebellion he won a brigadier-generalship in the Union service, and the thriving metropolis of Colorado still perpetuates his name.' He is now president of the Mexican Veteran Association, and did good service among his congressional friends for the passing of a bill for a pension to the Mexican veterans, which bill the house passed this session."

In commenting on the departure of the relief train, the *Alta*, of June 26, 1852, said:

* Only six miles.—*EDITOR.*

"Previous to their departure, the train, consisting of eight wagons, was paraded through the principal streets of Sacramento with a large placard on each, bearing in enormous capitals the words, 'The California Relief Train.' Governor Bigler was silly enough to make himself ridiculous by riding on horseback at the head of the procession; and it only needed the addition of an ear-splitting brass band to have made people believe it a parade of newly arrived ground-and-lofty tumblers, or a traveling caravan of wild animals."

Nearly a month after this article appeared General Denver, who had accompanied the train for a part of its journey, intending to remain with it during the fall of the year, had inserted in the Sacramento Democratic *State Journal* of July 24th, a card signed by himself, and the ten other members of the relief train. In this they set forth that they "had read with indignation a statement of the *Alta California*, in which it is made to appear that Governor Bigler had made himself ridiculous," etc. They further declared, "We are well satisfied that none but a personal enemy could imagine any such thing, and that enemy must be of the smallest possible caliber, who could descend so low as to pervert facts," etc.

The *Alta* of July 26th returned to the attack by publishing an article under the heading of "Governor Bigler's Attempt to Manufacture Political Capital Out of the California Relief Train." In this article the paper reiterated its statements of June 26th, and added:

"If any gentleman attached to the train, or any other friend of the governor, desires to make issue upon the matter, they know where to find us."

Denver replied by a communication to the Democratic *State Journal* of July 29th, in which appeared the following passage:

"If the editor of the *Alta* thinks himself aggrieved by anything I have said or done, it is for him to find me, and when so found, he can rest assured he can have any 'issue upon the matter' he may desire. Lest he shall have an excuse that he did not know where to find me, I will state that during the summer I shall be engaged with the Relief Train, and on the first Monday in January next I expect to be in Vallejo."

This called forth a personal letter from Gilbert to Denver, in which the former stated that he was the author of both articles that had appeared in the *Alta*, and concluded by saying:

"I find it my duty to demand from you a withdrawal of the offensive and unjust charges and insinuations which you have made."

Denver immediately replied that "not one word of the cards you allude to can be withdrawn by me, until the articles calling them forth have been withdrawn by you."

We take what follows from a well-written story which appeared in the San Francisco *Post*, October 5th, 1895:

The affair had by this time assumed a serious phase. Gilbert sought out his friend, Henry F. Teschemacher, and requested him to tender a challenge to Denver. Teshemacher was a man of the highest standing, afterwards being elected mayor of San Francisco.

On the receipt of the challenge Denver named Vincent E. Geiger as his second.

At sunrise on Monday, August 2, the duel took place. It was one of the most beautiful of midsummer mornings, and as the rays of sunlight filled the sky, nature seemed to awaken everywhere, and soon the world was filled with

joyous sounds, which little befitted the tragic scene about to be enacted. The preliminaries were quickly arranged, the distance named being forty paces. As the principals came upon the field and faced one another, they met for the first time. Both were unflinchingly brave men—Denver willing to make peace or fight to the death, and Gilbert possessed of a stubborn determination that nothing but blood should atone for what had passed.

Denver's second won the word, and the first interchange of shots quickly followed. Both men missed their marks; both stood uninjured. The sun was now well up, and in the full glory of the newborn day the two men stood ready, waiting for the second shot. The word was given, and almost immediately Gilbert fell. General Denver was uninjured. All quickly gathered about Gilbert as he lay apparently unconscious on the ground.

His friend Livingston raised his prostrate form, and held him in his arms while the surgeon attempted a hasty examination. But Gilbert was already beyond all earthly aid, for he expired in the arms of his friend in less than five minutes from the time when the fatal shot was fired.

News of the duel quickly spread in Sacramento, and the most intense sensation was produced. The mayor of the city appointed Jos. W. Winans and Gilbert's sorrowing friend, Livingston, on behalf of the citizens of Sacramento, to convey the body to San Francisco. It was brought down on the steamer Antelope, and on its arrival in San Francisco was conveyed to the home of Edward Conner, assistant editor of the *Alta*. The city was filled with gloom over the tragic affair, and elaborate arrangements were made for the funeral, to take place the next day. Everywhere was an aspect of general mourning. On the day of the funeral merchants closed their places of business, flags were displayed at half-mast and all classes of citizens turned out en masse to honor the dead editor. The attendance was the largest ever known up to that date. The *Herald, News, Whig* and *Journal of Commerce*, all appeared in mourning. Gilbert was buried in the old Yerba Buena Cemetery, and his body rested where the corner stone of the new City Hall now stands.

General Denver was never molested for the part he took in the unfortunate affair.

Inasmuch as General Denver was a lawyer by profession, we may add the following. He was born in Winchester, Va., October 23, 1817. He was a farmer's son, and began the study of law in 1842 in Ohio. He was graduated at the Cincinnati Law School in the spring of 1844. He went to Platte City, Missouri, and studied law, but it seems that the War with Mexico turned him away from the legal profession. He raised a company of infantry, was appointed its captain, and served under General Scott to the end of the war. In 1850 he crossed the plains to California. He was very soon elected to the State Senate for Trinity and Klamath counties, and served at the sessions of 1852 and 1853. He was Secretary of State from February, 1853, to November, 1855, when he resigned. He was a representative in Congress from March, 1855, to March, 1857. He was Governor of Kansas Territory in 1857-58. After a brief sojourn in California he settled in Ohio. In the Civil War he was a Brigadier-General of volunteers, resigning from the Army in March, 1863. General Denver died in Washington, D. C., August 8, 1894.

THE BRODERICK-SMITH DUEL, 1852

Of this encounter we give the lively narrative of Charles P. Duane, who witnessed it:

There are very few people who are aware of the fact that David C. Broderick ever fought a duel previous to the one in 1859, when he lost his life. In 1852 Broderick received a challenge to fight a duel from Judge Smith, the son of ex-Governor Smith of Virginia, who was better known as "Extra Billy" Smith. Judge Smith was also a brother of Austin Smith, who was killed in the late war while fighting in the Confederate service. At that time a man who refused to accept a challenge was not permitted to move in what was considered good society. He was treated with contempt and looked upon as a coward. Of course, Broderick accepted his challenge, and the ground was selected for the duel across the bay, about where the center of the city of Oakland now is. There were but a few shanties there then, and they were located on the shore, where the foot of Broadway street is. As soon as the news was spread that the place for the fighting had been fixed upon, every Whitehall boat in the harbor was engaged in taking people over the bay. They went back and forth all the night preceding the day of the duel. Ira Cole, two other gentlemen, and myself started from the San Francisco side in a Whitehall boat at one o'clock in the morning of the day of the duel. The fog on the bay was very heavy, and after we had gone some distance past Goat Island the tide was very low, and we found ourselves on the mud flats. We were obliged to remain there nearly an hour, and were surrounded by a great many boats in the same predicament. It was so foggy that we could not distinguish the forms of the occupants of the other boats, but we recognized our friends by their voices as they saluted our boat with "Brig ahoy!" and "Ship ahoy!" and the firing of pistols. A shot fired by some person hit one of the sailors in our boat in the arm and disabled him. Although we could not see each other, all sorts of bets were made on the result of the duel. After remaining on the flats for an hour, we drew lots in our boat to see who should undress and tow the boat to shore. I believe Ira Cole cheated me, because they all laughed at me when I pulled the short straw by the light of a cigar. As soon as it was decided that I should do the work, I immediately took off my clothes and stepped into the cold mud. I took the direction, as I thought, toward shore, and kept hauling until the break of day, when I felt as though I had towed the boat twenty miles. About the time that day dawned I reached the shore and found that I had towed the boat one mile south in a zigzag fashion from where the foot of Broadway street now is. After I had dug a hole for the water to come in, with the oars of the boat, and had taken a bath, we hauled our boat on shore. We then went over the fields until we sighted two pretty large crowds of people, apparently about a quarter of a mile apart, when we steered our course in that direction and were soon amidst them. One crowd were the friends of Broderick, and the others were the friends of Judge Smith, who was on the ground, accompanied by his father, Governor Smith. The duel was to be fought with navy revolvers, at a distance of ten paces, the signal for the shooting being, "One, two, three, fire." At the word "fire" the parties were to shoot, and, if they desired, were to advance toward each other, the firing to continue until all the six shots had been used. John A. McGlynn presented me with a navy revolver in 1850. It was a very fine one, and while I was shooting with it at a target, on several occasions, the exploded cap caught and prevented the cylinder from revolving. I took it to Brown & Natchez's gun-shop, opposite the Plaza, and had the cylinder filed so that the cap would not catch. Vi. Turner, one of Broderick's seconds, borrowed this pistol from me on the day before the duel, for Broderick's use. On the field,

when the duellists tossed up for the choice of pistols, Judge Smith's second won the choice, and he took the pistol which I had loaned to Vi. Turner for Broderick. Smith's pistol was the same make, but had not been filed as mine had. Previous to the placing of the pistols in the hands of the principals, Broderick pulled out his heavy, double-cased gold watch, which the Howard Engine Company in New York, of which he had been foreman, had presented to him on his departure from New York for California. He handed the watch to Vi. Turner, and within my hearing Turner said, "Put your watch in your pocket; if you are shot, die like a gentleman." At this Broderick smiled and replaced the time-piece in his pocket. The pistols were then handed to Broderick and Smith, and the question asked, "Are you ready?" On both answering in the affirmative, the word "fire" was given, and they both commenced firing. I could not tell which of them fired first. After the first shot Broderick's exploded cap caught in the cylinder of his pistol, and he did not have strength enough in one hand to cock it in the usual way. He then grabbed it in both hands, and, putting the pistol between his knees, proceeded to cock it. While in this position, facing his opponent, he was struck by a bullet from Smith's pistol. The ball hit him in the stomach and staggered him, and his hat fell to the ground. Having succeeded in cocking his pistol, he returned the fire, and they both kept shooting until they had fired their six shots. The seconds then rushed up to their respective principals, and Turner unbuttoned Broderick's coat. I stood close to him, and on examination we found that the bullet had hit the center of his heavy-cased watch, and that fragments of the bullet went through both cases and cut his stomach. Judge Smith was not hit at all. After a few moments, Turner asked Broderick if he felt able to renew the duel. His reply was, "Certainly, I am." The people on both sides were ordered back, and the seconds of both parties held a consultation with each other, and afterwards with their principals. At the consultation of the seconds, Mr. Smith's representative, on behalf of Judge Smith, said that he acknowledged that Broderick was an honorable gentleman. When Broderick's seconds informed him of this fact, he said, "Well, that is sufficient," whereupon the seconds brought their principals half way, and Broderick and Smith shook hands. The result was pleasing to all parties concerned. After the duel, it was impossible for all the people to get back to San Francisco on the same day, and many walked up to an old house known as the Estudillo Rancho, a private mansion occupied by Spanish people, which was situated where San Leandro now is. There they obtained horses and rode to San Francisco by way of San Jose.

The Smiths referred to in this account, comprised one of the most remarkable families in our political history. The father, after a brief appearance at the early California bar, returned to Virginia, of which State he had been Governor. He presided at the first Democratic State convention of California in 1850, and was the whitest-headed man in that body of pioneers. We last heard of him in 1885, when he was ninety years old and in robust health, living on his five-hundred-acre farm near Warrenton. The other two Smiths referred to were his sons. Austin, more properly Austin E., was United States Navy agent at San Francisco under President Buchanan. He had his duels, too, and was killed in the Confederate Army. The Judge Smith referred to, was J. Caleb Smith, Judge of the Court of Sessions of San Francisco in the early fifties.

THE RUST-STIDGER DUEL IN 1853

In June, 1853, Judge Stidger (editor of the Marysville, Cal., *Herald*) and Colonel Rust (editor of the *California Express*) met two miles south of Yuba City, in Sutter county, with Mississippi yagers, at sixty paces, and fired twice at each other without effect. Some few years ago, an eye-witness of this duel prepared a very elaborate account of it for a San Francisco paper. He entitled the article "A Clash Between Northern and Southern Pluck." This account is presented here, as copied in Truman's "Field of Honor":

> In the early days of California the writer resided in the then bustling and since beautiful city of Marysville. Of course he witnessed many exciting scenes. There was a vast mixture of the tragic, comic, and melodramatic, which could be woven by a masterhand into a volume of absorbing interest. The meeting for mortal combat between Judge Stephen J. Field and Judge W. T. Barbour, which, with the farcical incidents, is described by Judge Field in his valuable little book of reminiscences; the latter judge's long and vexatious controversy with Judge Turner; the beating of Dr. Winters by Plummer Thurston; the attempt to kill Judge O. P. Stidger by Plummer Thurston, just named, and Judge Barbour—these are but a few of this class of occurrences which agitated Marysville from 1850 to 1855. It is only the writer's intention now to narrate the circumstances of a duel between Judge Stidger and Colonel Richard Rust, which took place in June, 1853, in Sutter county.
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> Judge Stidger was then one of the editors of the Marysville *Herald*, a Whig paper, while Colonel Rust edited the Democratic organ in that city, the California *Express*. The two gentlemen had engaged for several days in a violent newspaper war, during which each had called the other anything but tender names. Judge Stidger's friends claimed that he was victor in the war of words, because he could say more mean things of his adversary in a minute than the latter could think of in a day. The judge had a peculiar way of driving the steel home at every thrust, and his antagonist was not able to return like for like. The consequence was that the judge was invited to transfer the quarrel to a field of different kind, that it might be settled in actual physical encounter by the arbitrament of the bullet. He owned his printing material, but was in debt, and John C. Fall was his endorser. Fall was approached and asked to withdraw from beneath Stidger his sustaining arms, and let the *Herald* pass into other hands. Fall declined to do this, and the fight went on. Finally, Colonel Rust's friends prevailed upon him to send the Judge a challenge to repair to the bloody and historic field of honor. It will not be doing him any injustice, perhaps, to say that they reasoned in this way: "Judge Stidger was born in Ohio, and was raised to look upon duelling as a crime. He won't accept a challenge, and if he does not he will be disgraced and compelled to leave the country."
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> The challenge was sent, the bearers being Lee Martin and Charles S. Fairfax, both now deceased, the party of the second part receiving it on Friday, at the *Herald* office. It was promptly accepted, Judge Stidger's reply being delivered by Judge Gordon N. Mott, now a resident of San Francisco. Subsequently Judge T. B. Reardon, (who presided at the second trial of Mrs. Fair, and is now practicing law at Oroville) came into the affair as a friend to the challenged party, and performed an important part. On the day the hostile missives passed, with commendable dispatch, pistols for two and coffee for six were provided. Being the challenged party, Judge Stidger was, under the code,

entitled to dictate the kind of weapons to be used, and the distance. He was a crack shot with the rifle. He chose buckeye rifles with set triggers, and fixed the distance at sixty paces. Judge Mott and Colonel Fairfax sallied forth in search of the needful instruments of death. They could not find any "buckeyes" in the city, and the only two weapons of the kind to be had were Mississippi yagers. These would suffice, of course, if they were of equal merit. The opposing seconds took them out and "tried them." One proved to be more reliable than the other. Another could not be had. What was to be done? The seconds determined the choice by lot, and Fairfax won the best gun for his principal. Judge Mott felt bad, but said nothing. It was agreed that the meeting should take place at sunrise on Sunday (it was then late on Friday), at any place in Sutter county selected by the seconds over five hundred yards from the Yuba county line. On Saturday night the seconds of Colonel Rust reported that he was seriously ill, and asked a postponement of the battle for one week, which was granted. It was believed by Judge Stidger and his friends that this was a ruse to get time to enable Colonel Rust to practice wtih his weapon. Be that as it was, the parties met one week from the time first appointed, the spot selected being a pretty grove of native oaks, about two miles south of Yuba City, near the public road between that "city" and the celebrated "Hook Farm," then occupied by General Sutter.

In addition to their seconds, before named, Judge Stidger was accompanied by Dr. McDaniel, and Colonel Rust by his brother, Dr. Rust, as surgeons. The week's postponement had had the effect to let out the secret, and several hundred citizens of Marysville were anxious spectators of the solemn scene. The distance being paced off, the choice of position and the giving of the word were, by chance, won by the seconds of Colonel Rust. It then looked bad for Judge Stidger. Judge Mott said to himself, "My man is going to get killed; Rust has the best gun and the best standpoint." Such was the fact, enough to inspire foreboding of evil. Rust stood within the shade of a large oak-tree, his back to the rising sun, which shone full in the face of Stidger. If Colonel Rust had not been practicing with his weapon during the preceding week, he was yet familiar with its species, while Judge Stidger never saw a Mississippi yager until he was handed one on that portentous morning. The writer recalls the Judge's remark upon taking his gun. He was standing at the spot marked out for him, his base of operations; Dr. McDaniel was about twenty feet to his left, the writer being near the doctor. Judge Stidger examined his gun carefully, and said to McDaniel; "Doc, what kind of a gun do you call this? I never saw one like it before." McDaniel gave the weapon's name. "Well," continued the Judge, "the bore can carry a half-pound ball; if I get hit there won't be a grease-spot left of me."

Just then Judge Mott approached and told his principal to keep cool. The reply was: "Oh, I'm as cool as a cucumber. I chose buckeye rifles," continued the principal. "I never saw a gun like this before, and I don't know how to handle it." Judge Mott said that buckeyes of equal calibre could not be found, and that he had done the best possible, and he explained the circumstances. Immediately after this the parties were instructed how to hold their guns until the word was given, how it would be given, and at what time to shoot, thus: "Gentlemen, are you ready?" On both principals responding "Aye," or "Yes," these words would follow: "Fire! One—two—three—stop!" A momentary pause would follow each word, and the principals were to fire at any time between the words "fire," and "stop." Fairfax gave instructions, after which the combatants were placed in position. The seconds took their proper places, and the surgeons were within conversational distance.

It was a scene that left an indelible impress on the mind of the beholder. The harmony of nature and the antagonism of men presented a striking contrast. The eight comprising the two groups were fine specimens of manly strength and symmetry of form. Their average age was about thirty years.

The Rust party were all Southern men; the Stidger party comprised two Southerners—Reardon and McDaniel, while Judges Stidger and Mott were from Ohio. They stood beneath the tattered banner of a code which was hoary with age, and had reached the last decade of its sway in American States. *Cui bono?* Being near Judge Stidger's position and some sixty yards from Colonel Rust, I saw more of the former and necessarily write more concerning his action. I can say of Colonel Rust, however, that his bearing was brave and resolute. The word came, "Gentlemen, are you ready?" Judge Stidger responded in a loud tone, "Aye." Immediately afterward followed (I did not catch Colonel Rust's response) "Fire! One—two—three—stop!" At the word "two," slang-bang went both guns. Stidger's shot passed high over the head of Rust; the latter's lodged in Stidger's coat-tail pocket, riddling a handkerchief. (It was a happy circumstance that the handkerchief caused the tail of the coat to bulge out, as it enabled a punster to exclaim with delight that the pocket was "rifled.") "Are your hurt?" inquired Dr. McDaniel, approaching his principal, desiring to know if his services were needed. "Hurt? no," was the answer. "Examine your pockets," said the Doctor. The Judge did so, and remarked, "That was a pretty clever shot." "Yes," replied the Doctor, "and now there must be no more foolishness. You must kill him, or he will kill you." To this the Judge answered, "I do not want to kill him. I don't want his blood on my hands. He has a family to maintain, and I don't want to rob them of their support." "That may be all very fine in theory," said the Doctor, "but the fact is before you that he is trying to kill you, and to prevent it, you must kill him. You can do it, if you will."

Judges Mott and Reardon now came up, and said that Rust demanded another shot. "Very well, I am willing," said Judge Stidger. The latter was then told by Judge Reardon that he (Reardon) would leave the field unless he (Stidger) promised to shoot at Rust. The Judge promised. Judge Mott then informed him that his position at the first fire was awkward, and he must stand erect; that if he continued to present so many angles to the enemy he was liable to get hurt. This admonition had good and immediate effect. Stidger thereafter stood straight as an arrow, and at the same time bore himself with perfect ease. The seconds having retired to load the guns for the second fire, Judge Stidger said to Dr. McDaniel, "I promised to shoot at Colonel Rust, but I did not promise to kill him, and I won't." The Doctor said, "You must kill him, or he will kill you. Your gun carries up. Shoot for his legs, and you will hit him in the body. The gun is good for three hundred yards, but at short range it carries up." Finally Judge Stidger said, "Well, Doc, I'll wing him. I will shoot for his arm. I'll cripple him, and then he can't shoot again." "Yes," answered the Doctor, "that would do if you had a guaranty of your own life. Supposing, while you are shooting for his arm, his ball should hit you in a vital place, what then?" "Oh," said the Judge, "if he should kill me, that would be the end of it."

The Judge was now handed his gun and placed in position for the second fire, with directions, to "keep cool and shoot him." The word was given. As before, both guns went off simultaneously. My eyes were intently directed to Judge Stidger, for I expected to see him fall. After the word "stop!" he held his gun to his shoulder, and earnestly eyed his adversary as though about to shoot. This action was so interpreted by Colonel Rust's seconds, who called out, "Stop! stop!" The fact was that, owing to both guns being fired at the same instant, the seconds of Rust did not know if Stidger had fired or not. On hearing the words "stop! stop!" Stidger threw his gun upon the ground and said, "Doc, this gun ain't worth a damn. I don't believe a man could hit a barn door with it at a distance of six feet. I had a splendid shot at his arm, and I got a pretty good sight along the barrel. If the gun had been worth a damn I would have struck his elbow." The Doctor asked, "Why didn't you shoot

at his body? I told you the gun carried up." "If I had done that," said the Judge, "I would have killed him, and I didn't want to do that." "Well," said the Doctor, "if he demands another shot what will you do?" "I will kill him," was the answer; "I have now given him two fair shots at me. I could have killed him if I had desired to do so. I spared his life because of his family, and because I did not want his blood on my hands. Now, if he isn't satisfied, I'll kill him. I don't want to do it, but if I must shoot again I will end it." To this the Doctor replied, "Now, you are talking right." The seconds again came up and reported that Colonel Rust demanded another shot, and wanted the distance reduced before the next fire. Judge Stidger replied that his gun was no account at sixty paces; he thought if the distance was doubled he would fire better. "Gentlemen," said he to his seconds, "I am in your hands. Whatever you say I must do, I will do. I only ask you to protect my honor." Judge Reardon replied, "That we will do." Judges Mott and Reardon then took the gun and left, and met the opposing seconds on neutral ground. The four men, after the guns were again loaded, appeared to be in earnest consultation. The while the Judge was pacing back and forth, talking with his physician. The Judge had got warmed up, and was chafing. McDaniel advised him to keep cool. "Oh, don't you fear, Doc," said the Judge, "I will be cool enough to kill that fellow, if he forces me to do it." Several minutes passed—seeming to the writer "a vast half hour"—when one of the seconds fired off a gun, which was a signal that some arrangement had been made putting an end to the affair. Judge Stidger's seconds coming back and verifying the "report" of the gun, he asked, "How? On what terms?" Judge Reardon answered, "Honorably to you. I drew up the stipulations, and saw to it that you are not compromised. The terms are honorable to both parties, and I am to hold the documents." All parties then left the field for the city.

Some time after the duel it was stated that Judge Stidger's second shot cut Colonel Rust's hair just above his ear, and that this it was that caused the Colonel's seconds to make peace. Whether true or not, the writer could not learn to his satisfaction. He has often talked with Colonel Fairfax about this duel. He (Fairfax) stated that he had witnessed many meetings of the kind in the South, where he was born and reared, but had never seen two men stand up more manfully to their work than those engaged in this affair. He spoke in glowing terms of Judge Stidger on that occasion, for, he said, he expected to see him wilt, being a Northern man, unacquainted with the code duello. "People needn't tell me," he said, "that men born in the North are cowards. I know better. It won't do to fool with such men. They have pluck and will die game."

ROBERT TEVIS AND CHARLES E. LIPPINCOTT AND THEIR DUEL IN 1855

We give Calvin B. McDonald's account of this fatal meeting, as published by the Sacramento *Record-Union* in 1879. It is as vivid a picture as he ever drew. Calvin B. McDonald was assistant editor of the *Evening Journal* in 1860-61; later editor of D. O. McCarthy's *American Flag*, 1865-66. He was sometimes called "The Triple Thunderer." We were city editor of the *Examiner* when Dickens died, and the editor-in-chief, B. F. Washington, consented to the employment of McDonald specially to write an editorial on Dickens. This was in 1870. Not long afterwards, the two editors became

personal enemies and waged war upon each other in their editorial columns. Both have been dead for many years.

In 1855 there came to this State a female temperance-lecturer, Miss Sarah Pellet, a friend of Lucy Stone Blackwell, Antoinette Brown and that confederation of lady reformers. She was young, intelligent, good-looking, and pure, and will be kindly remembered by many who shall read this sketch. The writer of this was then conducting the *Sierra Citizen* at Downieville, and Miss Pellet having been scurrilously referred to by certain other papers, she there found defenders, came to Downieville, and we became fast friends. Through her exertions a large and flourishing division of the Sons of Temperance was there established, and all the respectable young men temporarily stopped drinking and became enthusiastic advocates of total abstinence. A temperance Fourth-of July celebration was projected, and we nominated our friend, Miss Pellet, to make the oration, and notwithstanding a strong prejudice against women orators, succeeded in procuring her the coveted invitation. A short time before that, Mr. Robert Tevis, a promising young lawyer, and a brother of Lloyd Tevis, of San Francisco, who had come there to run for Congress, joined the Temperance Division, and was anxious to make the speech in order to present himself favorably to the public. He was hard to be put off, and was never reconciled to the disappointment; though, to pacify his opposition to the lady speaker, he was appointed to read the Declaration of Independence, with the privilege of making some remarks on the illustrious document. The glorious Fourth shone brightly on two or three thousand people. The celebration began with a salvo of all the anvils in town; the primitive band blew the blast of Freedom through patriotic brass, and Mr. Tevis, having read, began to comment on the Declaration in a long speech, greatly to the displeasure of the gallant sons. In order to terminate his misappropriate oration, the anvils were set to firing with such a thundering and consecutive noise that nothing else could be heard, and Mr. Tevis, being very angry, gave way for the orator and sat down. The event made a great deal of talk, and brought the ambitious young man into very unpleasant notoriety instead of fame. The Democratic party had procured the use of two columns of the local paper, and had appointed as editor the Hon. Charles E. Lippincott, State Senator from Yuba county. Lippincott had a keen appreciation of the ludicrous, and as Tevis was a Know-Nothing, he took occasion to roast the unfortunate young man in the Democratic corner of the paper, and it created a great deal of fun in the town. The next day Mr. Tevis came to me—I had no jurisdiction in the Democratic side of the paper—and demanded the publication of a card which pronounced the author of Lippincott's article "a liar and a slanderer." He was white with rage, and trembling, and would not be reasoned with. Knowing the nature of his antagonist and his deadly skill with arms, I tried to dissuade Tevis from the rash and dangerous publication, and dwelt on the inevitable consequence. But he would hear nothing; he wanted to fight, he said, and would fight, in the street or otherwise; and if the card was not published he would consider it an act of hostility to himself; and so the unconscious type gave out the fatal impress, and a challenge from Lippincott followed promptly, and was as promptly accepted. The difficulty took a political shape—Democrats and Know Nothings—though some leading Democrats did their best to prevent the meeting. Both belligerents belonged to the order of Odd Fellows, but as neither was a member of the local lodge, no direct authority could be imposed, though the good brethren kept in session all night devising means to prevent the encounter. Several times the difficulty was supposed to be settled, but as often it would be renewed by certain chivalric vagabonds, who seemed eager to see bloodshed when not flowing from their own veins. Morning came; the forenoon passed. The peace-makers having been so often baffled, gave up their humane exertions, and it was understood that the fight would come off

that afternoon. In the meantime the principals and their friends had gone to the wood, the public not knowing when or where, and the sheriff was in pursuit. The duelling ground had been selected some six miles from town, on a flat near the top of the lofty hills of Sierra county, where never a bird sings and where the somber fir trees spread their eternal pall; but when nearly ready for their sanguinary proceedings the sheriff and his posse were descried on a distant eminence, and the duelling party moved into an adjacent county, beyond the jurisdiction of the pursuers. There another arena was prepared, and the great act of the tragedy was ready to come on. In the meanwhile the principals had been away with their seconds in opposite directions, practicing with double-barreled shotguns, loaded with ball, at forty yards—the weapons and distance agreed on—and I was afterward told that each had broken a bottle at the word. Lippincott was a low, heavy-set man with light hair, piercing black eyes, deliberate and resolute in his speech, and with that peculiar physical structure indicating steadiness and self-possession. He was the son of a clergyman in Illinois, and was exemplary in his habits, except the ordinary drinking of that time; was highly cultivated in mind, and was an exceedingly good humorous and sentimental writer. He declared he did not wish to kill his adversary, to whom he had never spoken in person; did not want to fight if it could be avoided, but the nature of the public insult and the customs of the time compelled him to send the challenge. During a previous winter he had been engaged in hunting deer and bear, and was known to be a remarkably good woodsman. In making his choice of weapons, Tevis unknowingly selected those with which his adversary was most familiar, double-barreled shotguns, carrying ounce balls. Mr. Tevis was a tall, spare man, of a highly nervous and excitable temperament. He came from Kentucky, and possessed the ideas of chivalry and honor prevailing at the South, and was an excellent sporting marksman, but too little skilled in woodcraft to know that in shooting down hill one should aim low, else he will overreach the mark. He was possessed of good natural abilities, but was somewhat eccentric in manner, and did not possess the element of popularity. In walking out with him on the evening before the meeting I observed his manner was abstracted and his speech confused and faltering as he talked of his solemn situation, but his courage and resolution were unwavering, and he seemed absolutely athirst to spill the blood of the one who had made him the object of mortifying ridicule. This was our last interview and his last night upon earth; and the pale, ghost-like face, as it then appeared in the twilight when he walked under the frowning hills and beside the resounding river, hangs in my memory to this day. I had seen the bounding deer sink down before the aim of his iron-nerved antagonist, and felt then that he was a doomed man walking the lonely outskirts of the world. The combatants took their places, forty yards apart; the ground was a little sloping, and the highest situation fell to the lot of Tevis. The sun was going down upon the peace and happiness of two families far away, and upon a brilliant young man's ambition and life. As his second walked away he turned toward Tevis and laid his finger on his own breast, as an indication where to aim, and Lippincott observed the gesture and fixed his eyes on the same place. The word was given; both guns cracked at the same instant. Tevis sank down, shot directly through the heart, and a lock of hair fell from near Lippincott's ear. The fallen man had not made the necessary allowance for descending ground, and his murderous lead had passed directly over his adversary's left shoulder, grazing his face. His wound was frightful, as though it had been bored through with an auger, and the ground was horrible with its sanguine libation. The survivor and his friends took their departure, and the dead man was temporarily buried in that lonely place, which in the gathering twilight seemed like the chosen abode of the genius of solitude. On the following day the body was taken up, properly enclosed, packed on a mule to Downieville, and interred in the bleak hillside cemetery. The funeral was very large, and demonstrative, and seemed to be a death-rite performed by

the Know Nothing party; and although the duel had been fair enough, according to the murderous code, the better class of citizens regarded Tevis as the victim of that fell and devilish spirit which has stained the history of our State with human blood. Lippincott fled to Nevada; and when he afterward returned to Downieville, he felt himself like another Ishmael. Old friends extended their hands reluctantly, and then the man of sensibility felt that he was overshadowed by that voiceless, noiseless, horrible thing which made a coward of Macbeth. Miss Pellet, regarding herself as the innocent cause of the duel, stood courageously by her friend, visited him in his exile, exerted all her personal influence to reconcile public opinion to the survivor, and behaved altogether like a brave, true-hearted woman, as she was and still is, in her fancied mission of reform. After completing his term in the State Senate, Mr. Lippincott returned to his home in Illinois, to find his reverend father dying. I heard that his son's connection with the fatal duel broke the good man's heart, and he died. At the outbreak of the war, Lippincott joined the Union armies, distinguished himself in battle by his reckless daring, and became a Brigadier-General. He was afterward the Republican State auditor of Illinois. If this brief sketch should come to the attention of his personal or political friends, let them know that his career in California was distinguished and honorable; that he was respected and beloved by his acquaintances, and that his unhappy entanglement in the duel resulted from his position and the prevailing spirit of border life. At that time a politician who would have suffered himself to be published a liar and a slanderer, without prompt resentment, would have been considered as disgraced by most of his fellow-citizens. Mr. Lippincott was an intimate friend and strong supporter of the late Senator Broderick, and was by him regarded as his ablest advocate and partisan. Miss Pellet went to Oregon, and there, while a gallant settler went to pilot and protect her through the wilderness, the savages came upon and murdered his family and burnt his house. So did disaster seem to follow the poor girl. Afterward she returned across the plains to the East, and I have lately heard of her at a woman suffrage convention in Syracuse. Her temperance division at Downieville has melted away; some of her cold-water converts are dead; others have been separated from their families by the foul fiend whom she almost drove from the place, and one remains to be the brief historian of her memorable and melancholy campaign. And so swiftly turns the whirligig of time.

GEO. PEN. JOHNSTON AND WILLIAM I. FERGUSON AND THE FATAL DUEL OF 1858

Geo. Pen. Johnston of San Francisco, and William I. Ferguson of Sacramento, were true politicians—we might almost say, born politicians. They were most at home in political bodies, and, even before they reached man's estate, found their best stimulus in party strife. They thus represented a great class. To quote Wendell Phillips, if you had put them, when babies in their cradles, in the same room, one of them would have immediately said, "Mr. Speaker!" and the other would have called him to order.

The account which follows, of the fatal meeting between these men on Angel Island in San Francisco bay, August 21, 1858—appeared in the San Francisco *Call*, when the death of Mr. Johnston occurred, in 1884. It tells something of the men as well as of their dispute, and we will tell more of them later on.

George Pendleton Johnson was born in Kentucky and reared among a people whose traditions and sentiments not only accepted the duello, but exalted it as the tribunal of honor; and, while he would probably always have justified to his fellowmen the slaying of anyone under its rules, his humane, generous heart could never let him rest in entire peace with himself, under the knowledge that a human being had died through act of his. All his surroundings, as well as his antecedents, led him to the duel. He was not only born and reared in a state where "the code" was maintained and justified, but he emigrated to one where it was even more resorted to for the settlement of differences. The duello was never more popular anywhere, probably in the decade from 1840 to 1850, than in California. So many men had fallen or been injured, that about 1856 the practice of duelling fell into disfavor and disuse. The Johnston-Ferguson affair gave it a new impetus, which culminated in the killing in 1859 of David C. Broderick by David S. Terry, who resigned the Chief-Justiceship of the State Supreme Court to engage in this famous duel. The parties to the first of these two affairs were both prominent men, and the part each had taken in the exciting political events of the three preceding years had made them wide-known. Johnston had been a member of the assembly, where he had taken a prominent part, among other things, in introducing and pushing to passage an anti-duelling act, to give force and effect to the constitutional provision on that subject. He was an ardent supporter of Dr. Gwin for the United States senatorship, and opposed to the pretensions of Broderick, engaging in that contest with all his ardor and oratorical ability, which was considerable. In addition, he had rendered his decision as United States court commissioner in the celebrated case of the negro Archie, which created much feeling for its bearing on the question of slavery—the more by reason of its being a ruling by a Southern man in favor of the negro under one application of the fugitive-slave law; and finally he was clerk of the United States Circuit Court in San Francisco. Ferguson was a remarkable man, then in the prime of life and the full flush of his splendid talents. The son of a carpenter, born in Pennsylvania, he removed to Springfield, Illinois, where he studied law under Colonel E. D. Baker, and rose to a level at the bar with such associates as Abraham Lincoln, David S. Logan, Baker, and others of that calibre; thence removing to Texas, and finally to Sacramento, in this State, where he took and maintained his position among the brightest men at the bar, excelling especially in the department of criminal law. Possessed of great ambition, a brilliant genius, one of the most eloquent and fascinating orators California has ever held in citizenship, he entered politics, and soon became one of the most conspicuous characters in public life here. Elected to the State senate on the Know-Nothing ticket, he was in a sense a candidate for the United States senate in the exciting session of 1855-6, but finally supported General Henry S. Foote, father of our present railroad commissioner, upon the general's receiving the caucus nomination of the party. When the defection of Wilson Flint, one of the hold-over senators from San Francisco, who disregarded his party obligations and refused to vote for General Foote, prevented the latter's election and enabled Broderick to carry off at the next session the prize for which he struggled so long, only to find it a disappointing bauble, Ferguson distinguished himself by the force of the withering invective with which he denounced the "recreant." Then Ferguson became more prominent by renouncing the Know-Nothing party, his constituents demanding his resignation. He resigned, and made a successful canvass for re-election. Ferguson had one unfortunate frailty to which genius is often linked. Like many brilliant men of that, as of all other times, he was addicted to strong drink. In his convivial hours—or days—he was hilarious to a point quite inconsistent with the dignity of the senatorial character, even drunken senatorial dignity, as understood here a quarter of a century ago, and some of his roystering performances had gained for him the

nickname of "Yip-see-Doodle." During the senatorial contest above mentioned General Foote was thrown into such a transport of rage by a taunting mention of "Yip-see-Doodle," on the part of Colonel A. J. Butler, that he seized his tormentor, a man twice as large as he, by the collar, in a ludicrous effort to shake him. One evening about the middle of August, 1858, Johnston and Ferguson met in the old Bank Exchange saloon on Montgomery street. A joke by Ferguson, in which the names of ladies, friends of Johnston, were ludicrously introduced, was resented by the latter. High words ensued and weapons were drawn. Friends present interfered and they were parted. Johnston, who believed himself insulted, sent his friend, W. B. Dameron, to Ferguson the next day to demand an apology or satisfaction in the regular way of the duello. Ferguson refused the apology, was challenged, and accepted. It was first arranged that they should meet near Sausalito, but this was modified, and at five o'clock on Saturday afternoon, August 21, they stood facing each other in hostile attitude in a secluded glen on the east side of Angel Island, near where the quarry now is. Every traveller on the ferry between this city and San Quentin Point has seen the spot. Washington and Dameron were the seconds of Johnston; Eugene L. Sullivan and J. M. Estill, of Ferguson. Drs. Hitchcock, Angel and White were in professional attendance, and besides there were quite a number of spectators. The principals stood ten paces apart, resolutely awaiting the word, which was in the usual form: "Are you ready? Fire! One—two—three, stop!" After the interrogatory, both men answered firmly and exchanged shots at the word. Neither was harmed, and by mutual consent the distance was lessened. Again they fired without injury to either. The distance was again shortened, and a third time they fired ineffectually. At the beginning it was agreed that this should be the limit of the encounter, but Johnston insisted on an apology or a continuation of the fight. Ferguson was firm in refusing any sort of apology, and again the men faced each other, this time but twenty feet apart. The word was given; they fired simultaneously. Johnston's wrist was grazed, and Ferguson sank into the arms of his seconds, his right thigh shattered by the bullet of his adversary. Equal to Curran in pure wit and humor was Ferguson. The combatants had exchanged two shots, and Ferguson had fired his third, when, looking right into the jaws of death, he exclaimed, laughingly, to his second, "I'm a gone community." Mercutio was not gamer.

While Ferguson was lying on the ground, undergoing surgical examination, Johnston expressed a wish to give him his hand before quitting the ground. Ferguson faintly replied that he was in the hands of his seconds. Upon their assenting, Johnston advanced and, grasping the hand of his prostrate opponent, said, warmly, "Uncle Ferg., I'm sorry for you." "That's all right," whispered Ferguson; whereupon Johnston remarked, "That's enough said between gentlemen," and left the ground with his friends. Ferguson was removed to the city, where he was attended by half a dozen or more of the best surgeons here, including Drs. Sawyer, Grey, Coit, Angel, and Bowie. They advised him from the first that his wound was a serious one; that with prompt amputation of the limb there were fair chances of his recovery, but without it a very slim chance. He replied that he would not part with his leg for the whole of California, and that he would take the solitary slim chance they intimated. He sank slowly; the wound began to mortify; and when, finally, on September 14th, the amputation of the leg was attempted, he died under the operation. His death created a profound feeling on this coast, for he was recognized as a man of remarkable talents and promise. The body was taken to Sacramento for burial. A large delegation of prominent people from that city met it at Benicia and conducted it to the capital. It was laid in state in the senate chamber, where, carrying out the dying request of his unfortunate young friend and pupil, Colonel E. D. Baker pronounced, in the presence of a great assem-

blage, the funeral oration, followed by an impressive sermon by Rev. J. A. Benton, of the Congregational church. A great concourse followed the remains to the grave, and the people of Sacramento erected a handsome monument which yet marks the resting place of their gifted but unfortunate senator. Of course the sentiment was now largely in sympathy with Ferguson and against his slayer, and it was asserted that the duel was unfair because Ferguson knew nothing of the use of the pistol. Without expressing an opinion in regard to this, Colonel Baker mentioned it in his funeral oration, stating that Ferguson had never fired a pistol till the day before the duel. The reply to all this is simply that he, as the challenged party, named the weapons. Before the latter's death Johnston left the city on the United States revenue cutter W. L. Marcy, and it was said that he had run away to avoid responsibility for the duel; but upon being indicted by the San Francisco grand jury, under the anti-duelling act, of which he was the author, he came back to stand his trial. The grand jury of Marin county having also presented him for the same offence, he chose to meet his trial there, and surrendered to the authorities of that county. The trial took place before the Court of Sessions at San Rafael. The district-attorney prosecuted, and A. P. Crittenden, W. H. Patterson, E. L. Gould and T. W. Hanson—all since deceased—defended. The defense was that the wound was not necessarily fatal, and that if Ferguson had consented to an operation when advised to, he would have recovered. The medical testimony supported this theory, and the defense succeeded in securing an acquittal. The proceeding on the indictment in this county was dropped on the showing that the duel occured in Marin county. So far as the law was concerned, Mr. Johnston was free from the responsibility for the affair. He acted on the principles of a mistaken if chivalrous "code," which was inbred and inculcated in him, and justified him to his fellowmen who believed in or bow to that code. Men of coarser or less noble mould would have rested easy and content with such justification, but his gentle, humane heart never threw off the shadow of the tragedy.

It is easy to fall in with the general belief that Geo. Pen. Johnston's life, after he took that of Ferguson, was shadowed by constant self-reproach. He did avoid publicity to a great extent, but the duel did not especially occasion this habit. He showed merriment of heart almost every day. He told us once that after the paper went to press (in the afternoon) he liked to take his "tod" and read illustrated journals in an Italian saloon close by, because he did not understand their language, and nobody talked to him. He said his father was a clergyman.

Johnston came to California in 1850. He was in the assembly at the session of 1855. He was clerk of the United States Circuit Court from 1855 to 1860. A lawyer by profession, he so declared himself while holding this lucrative office. He was at the bar from 1862 to 1866.

In 1869, he bought an interest in the *Examiner* newspaper, and became the exchange editor. Parting with his interest when the whole paper was sold in October, 1880, he was retained in his place as exchange editor, and was so employed at his death, which occurred on the 4th of March, 1884. His age was 57 years. He was a bachelor.

The only particular statement of the quarrel between these fervid spirits which ever came to our notice was in the San Francisco *Post*, of November 30, 1895. But, first, is it a memory of Ferguson that brings this word

"fervid" to the point of our pen? We heard him often on the stump. Once a man of opposite politics in the crowd sang out, "Be brief." Ferguson answered, "I *will*—but *fervid*." Whereat there was general laughter.

The *Post's* statement referred to, is as follows:

> The quarrel which resulted in the duel between the two men took place on the evening of August 19, 1858, in the famous Bank Exchange saloon, on the southeast corner of Montgomery and Washington streets. Within a radius of two squares were situated the postoffice, custom house, a number of courts, banks, etc., and in consequence the "Exchange" was constantly thronged with politicians, government clerks, business men and men about town. It was there that the two men, in company with a number of mutual friends, were spending a spare hour on the day they had the misunderstanding which was to result so fatally.
>
> In the midst of the general conversation Johnston fancied he heard Ferguson mention the name of Senator Gwin's daughter in a slurring manner. Instantly enraged, he fiercely demanded an immediate retraction and apology.
>
> "I will never retract nor apologize," declared Ferguson, hotly, "and for the simple reason that I never used the expression you attribute to me."
>
> "I say you did," declared Johnston. "I heard you. Retract you shall."
>
> "I did not. Don't you dare say so, you —— —— ——!" exclaimed Ferguson, rushing fiercely upon Johnston.
>
> With lightning-like quickness Johnston drew and leveled his pistol, but before he could press the trigger, friends rushed between, and he did not fire. Then all those present took a hand in trying to quiet the disturbance, and both men were induced to leave the place.
>
> The next day, however, Johnston challenged Ferguson, and the latter promptly accepted.

We had known Ferguson, and felt the spell of his speech, long before this. It was a decade later, when we came to know Johnston. We then sat by the latter's side in newspaper work, and valued his friendship—although the man we loved best had fallen before his fire.

Of Ferguson, it may be added that he, too, was a bachelor, and a year older than Johnston. He was born in Pennsylvania, his parents' native State, May 9, 1825. Only Baker surpassed him as a speaker, on the stump or in the court-room. At the age of twenty-three, his name was on the Democratic electoral ticket of Illinois. Baker who spoke at his burial, associated his name with those of Lincoln, Douglas, John J. Hardin, "and many others who are the pride and boast of the Mississippi valley," W. H. Herndon, once President Lincoln's law partner, wrote to us of Ferguson in 1869. "He was the first criminal lawyer at the Sangamon bar," said Mr. Herndon. "He was chosen to deliver the Fourth of July oration at Springfield, in 1846, over such men as Abraham Lincoln, Judge S. T. Logan, and others. His oration was truly eloquent; it was finely, grandly eloquent." Judge Herndon's letter is in full, with a short sketch of Ferguson, in "Representative Men of the Pacific." Colonel Baker's remarks, and some very moving words of Ferguson himself, when he saw he was about to die, are in the little book, "Eloquence of the Far West (No. 1)."

He died young—and, now, so long ago!

"Brief, brave and glorious was his young career,—
His mourners were two hosts, his friends and foes;
And fitly may the stranger, lingering here,
Pray for his gallant spirit's bright repose;
For he was Freedom's champion."

Ferguson made two dying requests: the first—"Bury me in the county which honored me with a seat in the Senate," and, "My friend Baker knew me best in life, let him speak of me in death." He then asked for solitude, and made a higher petition not heard by men. He left the earth on the sure wings of prayer.

DAVID C. BRODERICK, DAVID S. TERRY, AND THE HISTORIC DUEL OF 1859.

David C. Broderick was born in February, 1820, in the city of Washington, under the shadow of the Capitol. He was destined to stand in that noble pile (which, it has been said, no American ever beholds without pride or leaves without regret), and, from his place in the United States Senate, point to the handicraft of his father, a stone-cutter, on the vast dome that draws a nation's eye. An extended notice of his life is not called for here. He grew up in New York city, and followed his father's trade, securing a limited education. When he became of age, and his fine natural qualities had won the friendship of learned men, he improved the new opportunities to gather varied knowledge—this by reading borrowed books at night. At the age of twenty-six he was nominated for Congress by one wing of the Democratic party, but was defeated. He left New York for California in 1849, declaring to his friends that he expected to become a United States Senator. Arriving in San Francisco in June, he secured employment in an assay office. He joined the fire department (as he had done in New York) and became the foreman of Empire Engine Company, No. 1, which after his death took his name. He was elected by the Democrats a State Senator, and served in the first, second and third sessions. At the second session, 1851, he was president of the Senate, and received a good vote in the Democratic caucus for United States Senator.

Broderick was a provident man, addicted to no vice. He brought some means from the East, and bought town lots, and so began the acquisition of a fortune, very soon giving up his place in the assay office. Dr. William M. Gwin, a distinguished public man from Mississippi, and who had been a member of Congress from that State, was elected to the Federal Senate for the long term, at the first session, 1849, General Fremont being chosen for the short term. From that time until Broderick's death, ten years afterward, the Democratic party, which generally controlled all departments of the State government, was divided into two wings, led respectively by Gwin and Brod-

erick. The great majority of Gwin's supporters were men from the Southern States, while Broderick's following was from the North—but there were many notable exceptions to this rule.

Broderick at length obtained the high prize he had sought, and took his seat in the Senate on the 4th of March, 1857, for a full term. Dr. Gwin was elected at the same time for a shorter period. The latter's first term had expired two years before, but the legislature had failed to elect. Broderick, now completely dominant, permitted the election of his old rival for the short term. Before doing this he had received from Dr. Gwin the so-called "scarlet letter," about which enough was written by the Doctor's enemies to fill many large volumes. Broderick afterwards, on the stump, read it to the people, referring to it as "this humiliating letter." Let it speak for itself—it is in full as follows:

SACRAMENTO, January 16, 1857.

Dear Sir:—I am likely to be the victim of the unparalelled treachery of those who have been placed in power through my aid and exertions. The most potential portion of the federal patronage is in the hands of those, who, by every principle that should govern men of honor, should be my supporters, instead of enemies, and it is being used for my destruction. My participation in the distribution of this patronage has been the source of numberless slanders upon me, that have fostered a prejudice in the public mind against me, and have created enmities that have been destructive to my happiness and peace of mind for years. It has entailed untold evils upon me, and while in the senate, I will not recommend a single individual for appointment to office in this State. Provided I am elected you shall have the exclusive control of this patronage, so far as I am concerned, and, in its distribution, I shall only ask that it may be used with magnanimity, and not for the advantage of those who have been our mutual enemies, and unwearied in their exertions to destroy us.

This determination is unalterable, and, in making this declaration I do not expect you to support me for that reason, or in any way to be governed by it, but as I have been betrayed by those who should have been my friends, I am, in a measure, powerless myself, and dependent on your magnanimity.

Very respectfully, your obedient servant,

WM. M. GWIN.

Hon. D. C. Broderick.

We had been greatly interested in Broderick for some years. It was at Sacramento, on the night of August 9, 1859, in the open air, that he gave the above letter to the public, and we were present—as we had been on the interesting occasion when the Know-Nothing Lieutenant-Governor, R. M. Anderson, of Placerville, declared him duly elected United States Senator for six years. His language was very severe. At Quincy, Plumas county, his words in regard to Dr. Gwin were even more serious. He said at Sacramento:

I shall give you the letter which I confidently believe was the cause of Senator W. I. Ferguson's death. When the death of William I. Ferguson was announced, fellow citizens, his desk in the senate chamber was broken open, and his private papers searched, for this letter, without avail. Ferguson on his death bed related to Estill how the fatal difficulty had been sought with him. He told Estill where the letter could be found. Estill found it, and, just pre-

vious to his own death, he told me where he had placed it. A curse seems to follow the secret possession of this letter. I give it to the public, that the curse may return to its author; that wherever he may go, by day or by night, the people shall see this evidence of his disgrace worn on his forehead as was the Scarlet Letter worn on the breast of Hester Prynne.

How apposite, now, appear the words of that man of fine perception and expression, the late Judge T. H. Rearden, of San Francisco, written for our "Representative Men," in 1870!

The train of events which seemed to make the death of the senator the irresistible necessity of the tragedy, pointed to Dr. Gwin rather than to Judge Terry as his veritable opponent. It was not on the same plane with Terry that Broderick's acts were projected. The offence rankling between them was an episode rather than the absorbing emotion; and the frightful unities of the drama would seem to have been better met, had Gwin rather than Terry pointed the fatal pistol that finished the career of our hero.

Milton S. Latham, Governor of the State, a Northern Democrat, opposed to Broderick, was elected and served out the latter's term in the Senate.

Hon. John Conness, now a resident of Massachusetts, succeeded in 1863 as United States Senator for a full term of six years. In a letter to us called forth by our recent publication of Colonel E. D. Baker's speeches, he incidentally alluded to this "scarlet letter." As Mr. Conness, who is a very positive man, speaks as if he did not care who heard, and as his words are quite interesting and have close application here, we give them now their proper page in history. He says:

"I was honored in being the friend of Broderick. I tried (in his chamber) to save him from the act which resulted in his death and which ill became him as the leader of gallant supporters—the election of Gwin to the senate. Before it was accomplished Broderick read to me, fresh from the pen of his antagonist, the latter's infamous letter of submission to Broderick, and the abnegation of his former division of the spoils. To heighten the disgrace and to convert me to the despicable act of its approval, Broderick added these words: "I will lead him into the senate with a halter about his neck, and this in the presence of his friends, Mason and Slidell, and make the cup of his disgrace full."

He imagined that this potent, or rather impotent, victory, over Gwin, would challenge my admiration. But, no. I did not see it that way; and I asked him who would give him the right to so degrade a senator and a senate, for the mere gratification of personal triumph over a political foe.

This interview I was bidden to in his sleeping room the night before this wicked bargain was consummated. I should add that I said to him, in bitter tones, that I had carried on this contest against Gwin, et al., upon statements to others based upon his words, and now, when the world should know that he chose to misdirect my efforts and those of others, by the election of this master of corrupt political organization, how could we justify it?

In 1859, the Democracy of California, which, as already stated, had always been divided, became two distinct political parties. This was caused by the policy of President Buchanan's administration in regard to the government of Kansas, then a territory (to be explaintd later). The administration party was led by Gwin; the anti-administration party, by Broderick. The former carried the State by an overwhelming majority, in spite of a combina-

tion between the anti-administration Democrats and the young Republican party. At the State convention of the administration Democracy in June of that year, Hon. David S. Terry, Chief Justice of the Supreme Court, was one of the speakers called upon to address that body on the eve of final adjournment. In his speech he used the words which led to the celebrated duel, and which, also, will be found further along in these pages.

Broderick read these words the next morning, at the breakfast table in his hotel, and expressed in strong language his indignation. The public has never been satisfied as to just what he did say. D. W. Perley, a lawyer of some prominence, gave this version of it:

> "I was sitting at the breakfast table of the International Hotel, directly by the side of Mrs. Colonel James. Her husband sat on the other side of her. Directly opposite sat Selover and Broderick. I spoke to both politely and took my seat, and then commenced a conversation with Mrs. James. Broderick then addressed himself to me as folows: 'Your friend Terry has been abusing me at Sacramento.'
>
> "I said, 'What is it, Mr. Broderick?'
>
> "He replied: 'The miserable wretch, after being kicked out of the convention, went down there and made a speech abusing me. I have defended him at all times when others deserted him. I paid and supported three newspapers to defend him during the vigilance committee days, and this is all the gratitude I get from the d——d miserable wretch for the favors I have conferred on him. I have hitherto spoken of him as an honest man—as the only honest man of a miserable, corrupt Supreme Court—but now I find I was mistaken. I take it all back.'
>
> "I then spoke as follows: 'Who is it you speak of as a wretch?'
>
> "He said, 'Terry.'
>
> "I said, 'I will inform the Judge of the language you have used concerning him.'
>
> "He said, 'Do so; I wish you to do so. I am responsible for it.'
>
> "I then said, 'You would not dare to use this language to him.'
>
> "He sneered at this, and echoed me—'Would not dare!'
>
> "I replied, 'No, sir, you would not dare to do it, and you shall not use it to me concerning him. I shall hold you personally responsible for the language you have used.'"

The gentleman referred to by Mr. Perley above, was A. A. Selover, a man of eventful life, who had been a real estate dealer and notary in San Francisco, and was then associated with Fremont in the great Mariposa estate. He had read law, but was never admitted to practice, we believe. He was a Major in the War with Mexico. He had been a Democrat and had been offered by President Pierce the postmastership at San Francisco, but declined. A native of the Empire State, he returned with a considerable fortune and settled in New York city a year or so after the date of the tragedy which is now concerning us. He joined the new Republican party in 1856.

Major Selover was shown Mr. Perley's statement of what occurred at the breakfast table, and he said:

> The whole language used by Mr. Broderick was in an undertone of voice. Mrs. Selover, who sat on my right, did not hear what Mr. Broderick said on the occasion. Mr. Broderick had but a few moments before read in

the Sacramento *Union* Judge Terry's offensive remarks in the convention. When Mr. Perley retired from the table, I expressed my regret at what had occurred, to which Mr. Broderick replied that he was provoked into it by the remarks of Judge Terry upon him. I have been induced to make this statement only by the fact that Judge Terry's friends have gone beyond the record, which is shown by the correspondence previous to the duel to have contained all the language Judge Terry had to take offense at.

I have no recollection of the word "damned" being used upon that occasion. I sat directly opposite, and, had it been used, I must have heard it.

Perley himself, as the friend of Terry, challenged Broderick. The latter declined, because their stations in life were not equal, and because he, Broderick, was about to make a canvass of the State. When the election had passed, so disastrously to the Broderick Democracy and the Republicans, Judge Terry resigned his place as Chief Justice of the Supreme Court and proceeded to San Francisco.

Let us now look at the Judge.

David S. Terry was born in Kentucky, in March, 1823. His ancestors, many generations before, had come from Ireland and Scotland, and settled in Virginia. His father was a cotton planter, and took his family to Texas before the acquisition of that country by the United States. The son, after Texan independence, which his own army service helped to achieve, read law, and was admitted to practice at Houston. After the War with Mexico, in which he also took part, he led a company of Texans to California in 1849, and, after a short experience as a miner in Calaveras county, began law practice in the same year, at Stockton.

In 1850 he was defeated for mayor of Stockton by Samuel Purdy, who was afterwards Lieutenant-Governor. He practiced law in partnership with D. W. Perley from 1850 to the close of 1855, when he took his seat on the Supreme bench, as the elect of the Native American, or Know Nothing party, for the term of four years. He became Chief Justice, on the death of Hon. Hugh C. Murray, in September, 1857.

When the great vigilance committee of 1856 was in absolute control of San Francisco, and Governor J. Neely Johnson issued his proclamation declaring the city was "in a state of insurrection," Judge Terry was on a visit to the metropolis. Some State arms had been shipped from Sacramento on a schooner to be used by State troops in San Francisco, but a party of vigilantes, under J. L. Durkee, seized the vessel in the strait between San Pablo and San Francisco bays. The committee, in investigating the matter of this shipment of arms, desired to take the evidence of one Reuben Maloney, who was believed to know all about it, and who, being a strong enemy of the committee, refused to attend and testify. It was determined to take him by force, and S. A. Hopkins, vigilance sergeant, and two men, were ordered to that duty. They found Maloney in a room with Judge Terry and a friend. The Judge told them that they should not make the arrest in his presence. Hopkins withdrew with his men and procured reinforcements. Returning in quest

of Maloney, he met him on the street, proceeding to the State Armory, accompanied by Judge Terry and friends, armed with guns. The arrest being resisted, Hopkins seized Judge Terry's gun, and the Judge instantly stabbed him in the neck, inflicting a terrible wound. The Judge was promptly overpowered, disarmed, and was incarcerated in "Fort Gunnybags." He was held a close prisoner for seven weeks, and, after undergoing a long trial, during which he took down himself the evidence of witnesses, he was released, owing to the recovery of Hopkins and the prospect of an early voluntary disbandment of the committee.

In 1862, Judge Terry went to the Southern states, passing through Mexico, and joined the Confederate army. After serving a while on the staff of Gen. Bragg, he organized a regiment in Texas, which he commanded in several battles. At the close of the war he commanded a brigade, a separate command. He was rigid in discipline, and severely punished raiding. An officer sent to inspect the condition of the troops in his department eulogized Terry's discipline. When the war closed he went to Mexico. Maximillian offered him a high military command, which he declined, and devoted himself to cotton raising for two years, but with no success. Then, in 1869, he returned to California. After a short stay at White Pine, Nevada, he settled down, in 1870, in his old town, Stockton, where he resided until his death.

He was a member of the constitutional convention of 1878, serving as chairman of the committee of the legislative department, and as a member of the committee on judiciary. He was author of the clause declaring the responsibility of bank directors to depositors. He took the stump in support of the new constitution, but declined a nomination for Supreme Judge on the ticket of the new constitution party. He was a candidate for presidential elector on the Democratic ticket in 1880, and was the only nominee on that ticket defeated, the vote being close, and he falling behind, owing it is supposed, to his name being scratched by old friends of Broderick.

We took occasion to remark of Judge Terry, a year or so before his death, as follows:

> The prominent lines of Judge Terry's character are unmistakable and well known to a broad acquaintance. He has great aggressiveness and undaunted firmness of purpose. He never quails, even before a raking fire. A man of strong friendships, it quite naturally follows that he has also strong prejudices; but he is easily placated, and in the path of mercy a little child could lead him. He is generous. His nephew and partner, who was long an inmate of his home, and who has given us a glimpse of his private life, speaks of him in terms of tenderness. His political foeman, Henry Edgerton, who defeated him for presidential elector in 1880, stated to us that he cherished for David S. Terry the highest personal regard. His charities have been many, but never ostentatious; in this respect his left hand has not known what his right hand has done. He is very impressive and effective before juries, but in his addresses in the court-room, as elsewhere, as also in conversation, he never attempts ornament, but rather disdains it. His speech is plain, but uttered with the force of frankness, the eloquence of a chaste simplicity, and the precision that is the birthright of a masculine intellect. False pride, shuffling and cant he opposes with the full

impulse and momentum of his nature. He is of giant physical stature. He stands six feet three inches in height, with Atlantean shoulders and sinews, has a weight of 225 pounds, is finely preserved, and looks ten years younger than his real age.

We will turn away from the thrilling drama which the life of this remarkable man unfolds, and pursue it to its tragic ending, under the head of the Sharon cases, elsewhere in this History.

We resume the account of the duel:

When he resigned his seat on the Supreme bench, and repaired to San Francisco, as before stated, Judge Terry addressed the following note to Senator Broderick. He wrote it at Oakland before crossing the bay, where he delivered it to his friend Benham.

OAKLAND, Sept. 8, 1859.

Hon. David C. Broderick—

Dear Sir: Some two months ago, at the public table of the International Hotel, in San Francisco, you saw fit to indulge in certain remarks concerning me which are offensive in their nature. Before I heard of the circumstances, your note of the 29th of June, addressed to D. W. Perley, in which you declared that you would not respond to any call of a personal character during the political canvass just concluded, had been published. I have, therefore, not been permitted to take any notice of those remarks until the expiration of the limit fixed by yourself. I now take the earliest opportunity to require of you a retraction of those remarks. The note will be handed to you by my friend, Calhoun Benham, Esq., who is acquainted with its contents, and will receive your reply.

D. S. TERRY.

Mr. Broderick received the note, at the hands of Col. Benham on the morning of the same day, and said he would answer in writing on the morrow. Before tomorrow came Col. Benham addressed this note:

SAN FRANCISCO, Sept. 8, 1859.

Hon. David C. Broderick—

Sir: Should you have occasion to communicate sooner than the time agreed upon between us, I will be found at the Metropolitan Hotel. I omitted to leave my address this morning.

Very respectfully, your obedient servant,

CALHOUN BENHAM.

Mr. Broderick responded to Judge Terry's letter the next day:

SAN FRANCISCO, Sept. 9, 1859.

Hon. D. S. Terry—

Sir: Your note of September 8 reached me through the hands of Calhoun Benham, Esq. The remarks made by me in the conversation referred to may be the subject of future misrepresentation, and, for obvious reasons, I have to desire you to state what the remarks were that you designate in your note as offensive, and of which you require from me a retraction. I remain etc.,

D. C. BRODERICK.

Judge Terry then sent his second letter:

SAN FRANCISCO, Sept. 9, 1859.

Hon. D. C. Broderick—

Sir: In reply to your note of this date I have to say that the offensive remarks which I alluded to in my communication of yesterday are as follows: "I have hitherto considered and spoken of him (myself) as the only honest

man on the Supreme Court bench, but I now take it all back"—thus, by implication, reflecting on my personal and official integrity. This is the substance of your remarks, as reported to me. The precise terms, however, in which such an implication was conveyed are not important to the question. You yourself can best remember the terms in which you spoke of me on the occasion referred to. What I require is the retraction of any words which were used calculated to reflect on my character as an officer or a gentleman.

I remain your obedient servant,

D. S. TERRY.

And the senator replied:

FRIDAY EVENING, Sept. 9, 1859.

Hon. D. S. Terry—

Sir: Yours of this date has been received. The remarks made by me were occasioned by certain offensive allusions of yours concerning me made in the convention at Sacramento, and reported in the *Union* of June 25. Upon the topic alluded to in your note of this date, my language, so far as my recollection serves me, was as follows:

"During Judge Terry's incarceration by the vigilance committee I paid two hundred dollars a week to support a newspaper in his (your) defense. I have also stated, heretofore, that I considered him (Judge Terry) the only honest man on the Supreme bench; but I take it all back."

You are the proper judge as to whether this language affords good ground for offense. I remain, etc.,

D. C. BRODERICK.

Judge Terry then wrote:

SAN FRANCISCO, Sept. 10, 1859.

Hon. D. C. Broderick—

Sir: Some months ago you used language concerning me offensive in its nature. I waited the lapse of a period of time fixed by yourself before I asked reparation therefor at your hands. You replied, asking a specification of the language used which I regarded as offensive. In another letter I gave you the specification, and reiterated my demands for retraction. To this last letter you reply acknowledging the use of the offensive language imputed to you, and not making the retraction required.

This course on your part leaves me no alternative but to demand the satisfaction usual among gentlemen, which I accordingly do.

Mr. Benham will make the necessary arrangements.

Your obedient servant,

D. S. TERRY.

And the correspondence closed with the following:

SAN FRANCISCO, Sept. 10, 1859.

Hon. D. S. Terry—

Sir: Your note of the above date has been received—at one o'clock A. M., September 10. In response to the same, I will refer you to my friend, Hon. J. C. McKibben, who will make the satisfactory arrangements demanded in your letter. I remain, etc.,

D. C. BRODERICK.

The following terms of the duel were agreed upon:

1. Principals to be attended by two seconds and a surgeon each; also by a person to load the weapons. This article not to exclude the drivers of the vehicles. If other parties obtrude, the time and place may be changed at the instance of either party.

2. Place of meeting—on the farm adjoining the Lake House ranch (Laguna Merced) occupied by William Higgins.

3. Weapons—duelling pistols.

4. Distance—ten paces; parties facing each other; pistols to be held with the muzzle vertically downward.

5. Word to be given as follows, to-wit: "Gentlemen, are you ready?" Upon each party replying "Ready," the word "Fire" shall be given, to be followed by the words, "One, two"; neither party to raise his pistol before the word "Fire," nor to discharge it after the word "Two." Intervals between the words "Fire," "One," "Two," to be exemplified by the party winning the word, as near as may be.

6. Weapons to be loaded on the ground in the presence of a second of each party.

7. Choice of position and the giving of the word to be determined by chance—throwing a coin, as usual.

8. Choice of the two weapons to be determined by chance as in Article 7.

9. Choice of the respective weapons of the parties to be determined on the ground, by throwing up a coin, as usual—that is to say, each party bringing their pistols, and the pair to be used to be determined by chance as in article 7.

Many years ago a distinguished jurist of this State read to us an extended account by himself of the trouble between Terry and Broderick, from its remote origin to its fatal culmination. Remembering that it was full of interest from an historical standpoint, we requested of him to let us reproduce the paper in connection with our own narrative. He consented, and we now give his account, omitting a considerable portion, owing to its great length. It explains the influence of the troubles in Kansas on California politics, and also gives the remarks of Judge Terry which were offensive to Broderick—which we have not set forth for that reason.

Before proceeding with a detailed account of this terrible tragedy and the immediate circumstances and causes which led up to it, it is proper to notice the condition of society in California in the earlier days, and the political condition of affairs during the first decade of the State's history.

During the year 1849, and for a few years thereafter, there was a large immigration to California from nearly all the States of the Union. They were mostly young men under forty years of age, who came seeking fortunes in this new and promising land. Many were ambitious for political distinction, and regarded California as a promising field for political enterprise. Of the latter class, the Southern States furnished the larger proportion, and they came fully impressed with the belief that they were the superiors of the Northern men in the qualities of gentlemen born to rule; and therefore the party leaders and directors of political affairs were to be found mainly in the ranks of these Southern gentlemen, some of whom before coming to California had held public positions of honor. They believed in slavery as a beneficent institution, and for the most part regarded the "Code of Honor" as an appropriate means for the settlement of personal grievances. They considered a Southern man greatly superior to one of Northern birth and education, in prowess and courage, and in the skillful use of deadly weapons; and consequently there were many duels, first and last, in a considerable number of which a Northern man was one of the combatants, who, notwithstanding his Northern origin and education, manifested a courage and skill which more than astonished his hot-headed adversary. The experience of a few years taught this presuming class of Southern young men that latitude and longitude were not safe criteria for the determination of courage and skill. They soon learned that whether born and reared in

the highlands of the North or on the plantations of the South, "a man's a man for a' that."

It is just to say of the immigration from the South, that many were gentlemen of high educational attainments and of refined and cultured manners. In social life they were attractive and genial companions, considerate of the opinions of others. This class of gentlemen was quite unlike the pretentious and boasting middle rank and low-grade chivalry, who were wont to carry upon their persons pistols and knives, with which, for even slight affronts, they professed themselves disposed "to blow the top of your head off."

Mr. Broderick came to California from New York early in 1849, and took up his residence in San Francisco. He was ambitious and inclined to political life. He was a man of strong natural ability, and possessed an indomitable will and the power of drawing men to him as a leader.

Dr. William M. Gwin, who came to California in 1849, was a Southern man by birth, residence, and education. His sympathies were with the people of his native South, and with their "peculiar institution" of slavery. He was a man of vigorous intellectual force, and was in the early days of California the leader of his party. The first legislature of the State elected him an United States Senator, and in casting lots for terms, he drew that which expired in March, 1855. His position as a Senator added to his strength as leader of the Democratic party. His influence was exercised for the advancement of his friends to the offices of Federal patronage, and, in the disposition of them, men of Southern birth and education, all other things being equal, were preferred. To be eligible to office, either Federal or State, it was essential, as a general rule, to be sound on the question of slavery, according to the standards of Senator Gwin and his Southern allies. This was carried to such an extent during the administrations of Pierce and Buchanan, that the custom-house at San Francisco came to be known as the "Virginia Poor House."

Mr. Broderick's power as a leader steadily increased. His following comprised people from every part of the Union, though its principal strength was from the States north of "Mason and Dixon's line." As his power grew, the opposition of Senator Gwin and his Southern followers and pro-slavery allies from Northern States increased and strengthened until it became furious; but Broderick was equal to the emergency, and his following grew stronger and stronger and as earnest and vehement as that of its adversaries.

In the summer of 1853, at the Democratic State convention held at Benicia for the nomination of a State ticket, the two factions of the party measured swords. The Southern wing, which was called the chivalry, was led by several of Senator Gwin's lieutenants, scarcely inferior in political generalship to himself. Broderick was there in person, and conducted the fight against his opponents with great adroitness as well as boldness. His ticket was nominated, with John Bigler, a native of Pennsylvania, then Governor of the State, at its head. This ticket was elected, and Broderick was then regarded by the majority of the Democratic party as its leader in the State, though the Gwin or chivalry wing yielded an unwilling acquiescence.

At the session of the legislature assembled at Benicia early in 1854, Broderick and some of his friends attempted to force on the election of a United States Senator to succeed Dr. Gwin, whose term was to expire in March, 1855. This movement was regarded by many of Broderick's friends, and others, as an injudicious and reprehensible step, as it was an attempt to do by that legislature a duty which properly appertained to the legislature to be chosen at the next election. The attempt failed.

The legislature which assembled at Sacramento, the new capital of the State, in January, 1855, made an ineffectual effort to elect a Senator. No one candidate could obtain a majority. The same thing occurred again at the legislature which convened in 1856. This was the "Know Nothing" legislature.

The Know Nothing party became dominant in the State in 1855. It was

composed largely of the chivalry branch of the Democratic party, and Whigs who had become scattered for want of a fold in which to gather them in united force.

By means of the Know Nothing organization, the opportunity came to the chivalry to overthrow Broderick, and his close followers. David S. Terry, a resident of Stockton, was a strong pro-slavery Democrat. He had resided in Texas from his early boyhood until he came to California in 1849. He abandoned his party and became a leading Know Nothing, and was nominated at its State convention in 1855 for Justice of the Supreme Court, and his ticket was elected.

The Know Nothing party was short-lived, for, in the fall of 1856, the Democratic party, then under the leadership of Broderick, gained the ascendancy, and elected a legislature strongly Democratic. At its session in January, 1857, Broderick was elected United States Senator for the term to commence on the 4th of March of that year. There was also the partly unexpired term, which commenced on the 4th of March, 1855, to be filled, and Dr. Gwin and Milton S. Latham were aspirants for the position. The struggle between them for it waxed strong and bitter. Each sought the aid and influence of Broderick, who at the time had them at his feet. Broderick preferred Dr. Gwin, and he was elected. Gwin humbly acknowledged his indebtedness to Broderick for his timely and effectual assistance. This was done in a communication over his own name, addressed to the people of California, after he was elected.*

While this senatorial struggle was in progress, there was going on in the territory of Kansas one even more vital to the cause of civil liberty. It was a contest between the Free-State men of that territory and the pro-slavery people of Missouri and other Southern States, who had gone there, some of them with their slaves, believing that this species of property, according to the doctrine of the Dred Scott decision, stood protected by the National Constitution, and was as secure in their possession as any other kind of property so long as Kansas might remain a territorial government, and always unless the people in their sovereign capacity should, in the adoption of a State constition, declare slavery to be unlawful within its borders.

The people of California had not then become generally interested in the free-State and pro-slavery contest of Kansas. In the latter part of the year, a convention of pro-slavery delegates met at the town of Lecompton, in Kansas, for the purpose of framing a constitution for the prospective State, a work which the convention performed, taking care to provide for the establishment of slavery as a permanent institution of the State. This provision of the proposed constitution was alone submitted to the electors of the territory for their adoption or rejection. but by another provision of the same instrument, the owners of slaves then in the territory were confirmed in their right in and to them, in the State of Kansas, even though the provision submitted might be rejected. The free-State men demanded a submission of the entire instrument, to be passed on by the electors of the territory, which, being denied, they refused to participate in the election. The result was that the question submitted was adopted by a large majority of a very small vote cast.

President Buchanan had promised the people that any constitution which might be formed for Kansas as a State should be submitted to them for their adoption or rejection; but upon the reception of the Lecompton constitution, he repudiated his pledge made to the people, and on the 2d of February, 1858, transmitted the instrument to Congress, accompanied by a special message urging the speedy admission of Kansas as a State of the Union under the

* Broderick's *choice* was Hon. J. W. McCorkle, ex-Congressman and ex-District Judge, of Oroville, but, powerful as he was, he could not effect that estimable man's election. As between Latham and Gwin, he preferred Gwin, because of the latter's abnegation in the "Scarlet Letter."—*EDITOR.*

Lecompton constitution, although, as he in effect expressed it, the instrument had not been fully submitted to the people for their adoption or rejection. Against admission under the proposed constitution, there arose in both houses of Congress a strong oppositon, led by Senator Douglas, of Illinois, with whom was Senator Broderick, who was an uncompromising opponent of the measure. Senator Gwin exerted all his strength in support of it, and from that time the California Senators became bitter enemies. The immediate result was that Broderick fell under the ban of the administration, while Dr. Gwin came into increased favor with the President, whose sympathies were more than cordial with those in Congress who were laboring to make Kansas a slave State. Thenceforth the Federal patronage for California was administered by Senator Gwin.

While the question of the admission of Kansas under the Lecompton constitution was convulsing Congress, the whole country became intensely agitated on the subject, and the people of California soon arrayed themselves on the one side or the other of the disturbing question. Those who were strongly pro-slavery were first in the arena of the conflict; those opposed to the extension of slavery were not much behind, and the indifferent waited to see the turn of events before choosing sides. The Republicans, then a party of nascent growth in California, were to a man opposed to the Lecompton fraud, and the friends of Senator Broderick were for the most part equally so, but fully three-fifths of the people of the State were either in favor of the extension of slavery, or indifferent respecting the question.

In the summer of 1858 the Democratic party met at Sacramento and divided forces on the question of the admission of Kansas as a State under the Lecompton constitution, and questions cognate to the subject. The party from that time became two-winged, and each held its convention and nominated candidates for Justice of the Supreme Court and State Controller, the only two offices to be filled by the election of that year.

The administration wing was denominated the "Lecompton" party, and the opposition wing was called the "Anti-Lecompton" party; some called it the "Douglas" party. With the anti-Lecompton wing of the Democracy, the Republicans united on the candidates for Justice of the Supreme Court; but, notwithstanding this, the Lecompton wing carried the election by a fair though not large majority.

The California Senators were in their places during the winter of 1858-9, and each devoted his influence on the side of the question he espoused.

The leaders of the Lecompton party in California were unscrupulous as to the means which might be employed to make Kansas a slave State. They were for slavery, and hated those who boldly confronted them. They hated Broderick, for his part in the struggle, with malignant personal hatred, and no one of these pro-slavery leaders was more bitterly hostile to Broderick than was Terry, who had declared himself not only the friend of slavery extension, but also of reopening the African slave trade.

In June, 1859, the two wings of the Democracy met in the State conventions at Sacramento to place in nomination each a full ticket for State officers. The anti-Lecompton wing was the first to make its nominations. At that time the California Senators had returned home, and were preparing to enter upon the approaching campaign. Judge Terry was placed before the Lecompton convention for the office of Justice of the Supreme Court, as his own successor, but he failed to receive the nomination. It fell to the lot of one of his competitors. The nominations having been completed, there was held in the hall or place of the convention, on the evening of the 24th of June, a meeting to ratify the nominations made. At that meeting Terry was called upon to speak, and he responded in a vehement speech, in which he inveighed coarsely and insultingly against the anti-Lecompton party, of which Broderick was a member and the leader in the State, and against Broderick personally. The particularly offensive part of his speech is here given. He said:

"Whom have we opposed to us? A party based on no principles, except the abusing of one section of the country and the aggrandizement of another; a party whose principles never can prevail among freemen who love justice and are willing to do justice. What other? A miserable remnant of a faction, sailing under false colors, trying to obtain votes under false pretenses. They have no distinction; they are entitled to none. They are the followers of one man, the personal chattels of a single individual, whom they are ashamed of. They belong heart and soul, body and breeches to David C. Broderick. They are yet ashamed to acknowledge their master, and are calling themselves, forsooth, Douglas Democrats, when it is known—well known to them as to us—that the gallant Senator from Illinois, whose voice has always been heard in the advocacy of Democratic principles, has no affiliation with them, no feeling in common with them. Perhaps, Mr. President and gentlemen, I am mistaken in denying their right to claim Douglas as their leader; perhaps they do sail under the flag of a Douglas; but it is the banner of the black Douglass, whose name is Frederick, not Stephen."

These were the words of the Chief Justice of the Supreme Court of the State, the dignity of whose position, his friends have claimed, weighed heavily upon him.

The speech was reported in the Sacramento *Union*, a newspaper of wide circulation, on the morning of the following day, from which it appeared that it was received by the large audience with great applause and vociferous cheering.

This speech was the first immediate, overt offense which led to the Terry-Broderick duel,—a fact which cannot be gainsaid by any one capable of drawing just conclusions from given causes, though Terry's friends and admirers have carefully avoided giving any importance to it as an offense, one of whom has gone so far as to justify and excuse it, as clearly within the pale of legitimate debate, and in no sense censurable as a reflection against Broderick.

On the morning of the 26th of June, Broderick, while at the breakfast table of the International Hotel, in San Francisco, read the speech of Terry as it appeared in the *Union* of the 25th. He was disturbed and angered, and spoke of it to a friend next him at the table, about which there were seated a few other persons. He remarked that while Terry was incarcerated by the vigilance committee, he had paid two hundred dollars a week to support a newspaper to defend him, and, continued: "I have said I considered him the only honest man on the Supreme bench, but I now take it all back."

Mr. D. W. Perley, a former law partner of Terry, happened to be at the table, and resented the words of Broderick, who cut him short with some curt remark, which Perley deemed offensive to himself. Perley then published his version of what Broderick said, which he endeavored afterwards to have some of those present corroborate, but met with a denial by them of the truth of his story. Perley himself challenged Broderick to a duel, which the latter declined, saying at the time, that he would not allow himself to be drawn into an affair of the kind while the campaign then inaugurated should continue, in which it was his purpose to take a part.

Both Mr. Broderick and Dr. Gwin took the stump, and the war of crimination and recrimination between them was bitter in the extreme, and it was so to a considerable degree between the leaders of the two wings of the Democratic party, though there were exceptions to this mode of political warfare.

The election was on the 7th of September, 1859, and the Lecompton party won a decisive victory. Throughout the campaign the air was full of imprecations and threats against Broderick. It was believed by his enemies that his death was a political necessity, and that it must be accomplished, if not by the first duel, then by another or others to follow.

On the day after the election, Terry, accompanied by his friends, Dr. Ashe and Dr. Aylette, on the 8th of September, proceeded by stage from Stock-

ton to Oakland, having with him the pistols which were afterwards used in the duel. There they were placed in charge of a Texas friend of Terry, and thence they were taken to the field of the conflict which followed. The parties agreed as to the language used by Broderick respecting Terry, which he regarded as offensive in its nature. It is also to be noticed that the latter did not credit the story of his friend Perley, as to what Broderick had said at the breakfast table. Yet Mr. James O'Meara, after all this, adopts Perley's version of what was said there, and deduces therefrom his conclusions that Broderick's remarks were extremely harsh and offensive.

Terry's friends have always carefully ignored the fact that his speech before the convention of his party was to be considered as forming any part of the controversy. They assume that the remarks made by Broderick were the first offense, and have given to them an interpretation which is strained to mean that Broderick's words were an imputation against the judicial integrity of Judge Terry, which could be atoned for only by abject and craven humiliation, or by blood.

To understand the merits of the controversy between the parties, the order of events should be carefully observed, from which it appears that Terry was the first to give offense. In his speech quoted, he charged Broderick and his party as being dishonest, "sailing under false colors and trying to obtain votes under false pretenses"; and, in ribald and scornful terms, he denominated the anti-Lecompton wing of the Democratic party as the "personal chattels of a single individual, whom they were ashamed of," as belonging "heart and soul, body and breeches to David C. Broderick," and "yet ashamed to acknowledge their master."

These were the words, not of a black-guard in private life, but of the Chief Justice of the Supreme Court of the State. They not only applied to the individuals of the party of which Broderick was the leader, but to him personally, in a most offensive sense, as a master of whom his followers were ashamed, and as one whom they contemned and despised.

In the correspondence between the parties, it appears that Broderick referred Terry to the latter's speech as the cause or occasion of his own remarks respecting him, and referred him to the record of that speech in the Sacramento *Union* of June 25th, the consideration of which Judge Terry chose to disregard. Thus it appears that the evidence touching this branch of the controversy between the friends of Terry and the friends of Broderick is of the nature of record evidence, importing absolute verity. Upon this evidence the questions arise:

First—Which of the parties was the first to give offense?

Second—Which of the parties was in honor bound to apologize and make reparation to the other?

These questions being answered, the ultimate proposition is, Was there any just ground or excuse for the challenge given by Terry to Broderick, even according to the principles of the code of honor, which the advocates of that system for the settlement of personal quarrels maintain are in accord with the principles of honor, justice, and equity?

The particularly dramatic, as well as the terribly tragic, part of the affair, miscalled an "affair of honor," remains to be told.

At the time the correspondence between the parties was opened, the physical condition of Broderick, was most unfavorable for the barbarous business upon which he was called to enter, and which he accepted. This was owing to the extraordinary mental and physical strain to which he had been subjected in the Senate, and during the political campaign then recently closed. On the other hand, Terry seemed well prepared by assiduous training for the work which he had had in anticipation for more than two months.

Both were men of great physical strength, and both of strong mental force; but neither of them was of high educational attainments, nor of much culture.

Broderick was known as a man of positive traits and giant will. He was a natural leader of men. Terry was known as a man of strong prejudices and bitter animosities. He believed in enforcing obedience to his will by force of arms. He was a natural and typical leader of the particular class to which he belonged. He believed in the code as an appropriate means for the settlement of private quarrels. Broderick recognized its obligations, in deference to the prevailing sentiment of the time.

In Terry's first letter to Broderick he said at its close, "This note will be handed you by my friend, Calhoun Benham, Esq., who is acquainted with its contents and will receive your reply." Benham delivered the letter on the evening of the day of its date, when Broderick remarked that he would give it attention the next day. Benham urged more prompt action, and from that time the correspondence proceeded at double-quick speed until its conclusion. On the part of Terry and Benham, the object seemed to be to keep Broderick under whip and spur until the work in hand should be fully accomplished. Terry's letter, tendering a challenge, was delivered by Benham to Broderick about one o'clock in the morning of the 10th of September. To effect the service of the challenge at this dead hour of the night, Benham waited on Broderick's friends at the Union Hotel, on Kearny street, opposite Portsmouth Square, in San Francisco. Broderick was then at the house of his friend, Leonidas Haskell, at Black Point, a full mile and a half away, where he had gone to obtain a comfortable rest for the night. Benham, by persistent urging, induced Broderick's polite and accommodating friends to have him aroused from his sleep, for the purpose of coming to the city on business of urgent importance. Broderick was accordingly informed of the necessity of his immediate appearance at the place appointed, and came over the hills to the city. On his way down Jackson street near Stockton street, he was met by Benham, who delivered to him Terry's challenge. Broderick soon reached the hotel and there found his friends awaiting his coming. He was vexed and annoyed in that they had allowed him to be disturbed and broken of his rest, of which he was sadly in need. By his letter accepting the challenge, Broderick stated the hour when it was received by him to be one o'clock in the morning.

The challenge having been given and accepted, a time and place were appointed for the hostile meeting. The 12th of September was the day named. The place designated was in San Mateo county, near the boundary line between that county and San Francisco, not far from Laguna de la Merced. The principals, with their seconds, surgeons and friends, were on the ground at an early hour in the morning. The chief of police of San Francisco, armed with a warrant, duly endorsed by a magistrate of San Mateo, appeared in due time and placed the principals under arrest. They appeared before the police court on the same day, and, being discharged, arranged for a meeting on the day following. They met early in the morning on the 13th of the same month, at a spot near the place of their meeting the day before. The respective principals were accompanied by their seconds, surgeons and friends, and others curious to witness the conflict, amounting in all to about seventy.

Terry's seconds were Calhoun Benham, Thomas Hayes and Samuel H. Brooks. Broderick's seconds were Joseph C. McKibben, David D. Colton, and Leonidas Haskell. Terry and his seconds brought with them the "Jo Beard pistols," which at that time were called the "Aylette pistols." At the same time there appeared on the ground a gunsmith of San Francisco, with a pair of duelling pistols, his own property. The gunsmith had been employed, by the mutual agreement of the parties, as armorer for the occasion. Mr. O'Meara and also Mr. Samuel H. Brooks, in his account of the duel, recently published in a San Francisco newspaper, speak of "Natchez," whose real name was Andrew J. Taylor, as the armorer who was on the ground of the hostile meet-

ing. In this they are both in error. The armorer's name was Bernard Legardo. At that time Natchez had been dead nearly a year.*

It is not true, as Mr. O'Meara says, that Broderick's seconds brought with them a pair of duelling pistols. They had agreed with Terry's seconds upon the armorer, and they relied upon him for suitable duelling pistols.

In the preliminary arrangements of the parties, they cast lots for the choice of pistols. The choice fell to the side of Terry, who chose the "Aylette pistols," and his seconds selected the one of the pair which they desired for his use, and handed the other to the seconds of Broderick. The armorer, Legardo, examined them and pronounced them in good order, except that they were too light and delicate on the triggers, of which fact he informed all the seconds, and told one of the seconds of Terry that the one for Broderick was lighter than the other. The armorer so testified at the coroner's inquest upon the dead body of Mr. Broderick, and he further testified that the pistol for Broderick's use was so delicate that it would explode by a sudden jar or jerk. The armorer asked McKibben why he did not force on his principal his (the armorer's) pistols, to which McKibben replied that Terry had won the choice of weapons. The armorer then loaded the pistol to be used by Broderick, and Mr. Brooks loaded the one selected for Terry, which was delivered to him, and the one for Broderick was delivered to him, who, upon receiving it, anxiously examined it, turning it about, scrutinizing it and measuring its stock with his hand.

In Mr. Oscar T. Shuck's sketch of David S. Terry, in "Bench and Bar in California" (A. D. 1889), he gives the statement of an eye-witness to the bloody affair, written only a short time thereafter. This eye-witness said: "Mr. Broderick seemed to know the importance of the issue, and seemed nerved to meet it. Up to the time the pistol was handed him, he appeared the cooler and more collected of the two. But after examining the pistol he seemed to become uneasy. He betrayed nothing like lack of courage, but in measuring the stock of the pistol with the conformation of his hand, he presented to the observer an unsatisfied appearance. This was shown by more than one movement." And the same witness said: "All agreed that his personal bravery was patent. There was no weakening, but there was an anxious solicitude in his deportment that placed him at a great disadvantage." Even after the words, "Gentlemen, are you ready?" were pronounced, and Terry had responded "Ready," Broderick spent several seconds in examining the stock of his pistol, which did not seem to fit his hand, and then he answered "Ready," with a nod to his second, General Colton, who had announced in the beginning, "Gentlemen, are you ready?"—and then followed the words, "Fire—one—two," in the measured strokes of the Cathedral clock. Broderick fired first, as the word "one" was pronounced. Terry's shot followed at the point of time the word "two" was commenced utterance. Broderick's shot was spent in the ground some four or five yards in advance of him, in a direct line between him and his adversary. Terry's shot took effect in Broderick's right breast, producing a mortal wound, from which he died three days afterwards.*

Upon receiving the pistol selected for him, and loaded for use by his friend, Brooks, Terry seemed composed, resting it upon his left hand as he held it with the other. He exhibited no concern as to its stock, formation, or shooting qualities. Until it was definitely settled that he had secured for his use the

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* "Natchez had been armorer at the fatal duel between Hon. Geo. Pen. Johnston and Hon. Wm. I. Ferguson, at Angel Island, San Francisco bay, August 21st, 1858. He shot himself in his shooting gallery.

* The correspondent of a New York paper narrated that as soon as Broderick fell, the owner of the ranch, who had been silently regarding the proceedings, started to his feet and shouted, "That is murder, by God!" He moved toward Terry, as though intending to assault him. He was intercepted by by-standers, who said that it was folly to provoke additional bloodshed. He

pistol of stronger trigger, the same witness said "he seemed agitated, and measured the ground in his direction with an uneasy and anxious tread." But with his chosen pistol in hand, and the extremely delicate and dangerous one in the hands of his opponent, he took his position with firmness and composure, watching every movement and expression of his adversary.

From the beginning of the correspondence until Broderick fell mortally wounded, the conduct of the Terry party was distinguished by an intensely earnest and fiercely aggressive spirit, which showed them bent on winning the fight at all hazards. The deportment of Terry's seconds on the ground was determined, bold, and confident, which was in marked contrast with the respectful and deferential deportment of Broderick's friends, in the presence of their adversaries.

When the respective principals had taken their positions, as yet unarmed, they were each subjected to the customary examination of their persons for concealed armor. McKibben's office was to examine Terry, and that of Benham to examine Broderick. Each of these seconds proceeded to the examination. McKibben approached Terry in a gentle and respectful manner, pressed the back of his hand against the latter's breast, and then fell back with a courtly bow and a wave of his hand. At the same time, Benham was manipulating and searching Broderick up and down his person, as if he verily believed he had upon him an impenetrable coat of mail. Broderick was greatly disturbed by Benham's conduct, and indignantly said to a friend near him that Benham had treated him as an officer would search a thief for stolen property. The contrast between the conduct of McKibben and that of Benham was so marked as to attract the notice of those present. Broderick's friends felt indignant as they saw him thus openly insulted, and those of them still living well remember it to this day. The examination of Broderick's person being finished, Benham stepped to the position of his principal, and, covering the side of his mouth with his hand, whispered in Terry's ear, which the latter seemingly acknowledged with an approving smile. Some time after all this, Benham acknowledged to a friend of Broderick, who took exception to his conduct and mode of examination, that it was not courteous, but excused himself on the ground that his principal's life was in his keeping, and he was bound to do whatever was necessary to protect him.

It cannot be reasonably claimed that there could be any advantage on the side of Terry in that he had the choice of pistols, provided they were ordinary duelling pistols and in all respects alike, and equally unknown to both parties.

It is said by those who have seen these Aylette pistols that in stock or breech construction they are unlike ordinary duelling pistols, and the manner in which Broderick scrutinized and handled the one given him, and his efforts to fit his hand to it, was evidence that he was wholly unacquainted with it. On the other hand, the manner of Terry in respect to the pistol provided for his service, and his quiet unconcern as to it and its shooting qualities, was evidence that he was acquainted with both of them.

It is susceptible of proof that, only a short time before the Terry-Broderick duel was fought, Terry and Dr. Aylette repaired to the place of a farmer in San Joaquin county, where they practiced shooting at a mark with the pistols

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brushed them aside, exclaiming, "I am not going to see him killed in that way. If you are men, you will join me in avenging his death!"

"We know you are Mr. Broderick's friend, but we know as well that if you attack Terry there will be a general fight, and but few will get off this ground alive. Think a moment before you do this thing."

Luckily, this scene was not witnessed, nor the remarks overheard, by any of the Terry partisans, else there would have been a bloody conflict, whether their leader had been attacked or not. The milkman was quieted and sat himself down, breathing threatenings of slaughter.—*EDITOR.*

in question. Charles C. Knox, for many years a business man in Sacramento, states that Terry had in his possession the same pistols while a Justice of the Supreme Court, at the State Capitol, and he further says that a few days before the Terry-Broderick duel, he was at Haywards, in Alameda county, and while there the stage-coach arrived on its way from Stockton to Oakland, with Terry, Dr. Ashe and Dr. Aylette as passengers. At Haywards they were met by a large number of their friends, who had come in several carriages from Oakland, to whom Terry and his traveling companions exhibited the Aylette pistols, and then they were given in charge of some one or more of their Oakland friends. Mr. Knox says Mr. Hayward, the landlord of the place bearing his name asked him: "What is up that brings together such a lot of Chivs?"

Dr. Washington M. Ryer, a practicing physician at Stockton in early times, says Terry was in the habit of practicing with the Aylette pistols at his place in Stockton, in 1857.

The evidence already produced more than tends to show that Terry was well acquainted with the Aylette pistols, by frequent use of them before they were brought into requisition on the field of the conflict. Upon this point it may be said the evidence is substantially conclusive.

From what the gunsmith testified before the coroner's jury, there is no doubt respecting the dangerous character of the weapons, and especially of the one appointed to the lot of Broderick.

This account of the gunsmith was confirmed by what Mr. Broderick said on his dying bed, as appears further on.

Mr. O'Meara says the pistols in question had been used, before the Terry-Broderick duel, in several affairs of honor; "that they were so exactly alike in every respect that no difference had ever been discovered in their shooting qualities. They had hair-triggers, evenly and equally adjusted."

The phrase, "their shooting qualities," is ambiguous. That their hair-triggers were evenly and equally adjusted is not sustained by the established facts. It is quite certain they were not evenly and equally adjusted on the morning when used by the two principals named.

The next day after the duel transpired, the pistol which fell to the lot of Broderick came into the possession of the captain of the detective force of the police department of San Francisco, who experimented with it for the purpose of testing its alleged trigger infirmity. By a simple experiment, he demonstrated its extremely dangerous character in the hands of any one unaware of its eccentricity. With the hammer of the lock set, he caused it to spring by blowing vigorously from his mouth against the trigger. The success of the experiment was known at the time, and can now be proved by the captain himself, who is still in the possession and enjoyment of a strong and retentive memory.*

A few years before his death, Jo Beard, who at one time owned these pistols, told his friend, Frederick H. Waterman, of San Francisco, that there was something peculiar about these pistols—that they were not alike—that one of them was tricky, but the other was a lucky pistol that always killed. Jo Beard was a personal friend of Terry, in full sympathy with his pro-slavery views.†

The same pistols were used in the duel between Dr. Washington M. Ryer and Dr. Samuel Langdon, which occurred at Stockton, in 1857. Dr. Langdon, the challenged party, chose the Aylette pistols for the conflict. Each took one of them for the purpose of preparing in advance for the duel. Dr. Langdon selected for his use the weapon of stronger trigger. Dr. Ryer was then ignorant of the difference between them. In practicing with the one that came

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* He has since been chief of police, and still lives in San Francisco. —*EDITOR.*

† Joseph R. Beard was clerk of the Supreme Court during the years 1855-56. He died in San Francisco, March 17, 1887.—*EDITOR.*

to his hands he discovered its tricky character, but, with all his care in guarding against its eccentric characteristics, he was unable to fully overcome it. Afterwards, on the field, he said that, with all his caution, he was not able to bring his pistol to a horizontal position before it became discharged. At the third round he succeeded in raising it as high as the knee of his adversary, in which his third shot took effect, and so ended that duel. Dr. Ryer says that during the exchange of shots, the bullets from the pistol of Dr. Langdon whizzed unpleasantly past his ear, thus showing that the latter's pistol was not afflicted with the infirmity peculiar to his own.

Elliot J. Moore, for the last forty years a resident of San Francisco, a lawyer of highly reputable standing, and in early times a state senator of admitted intelligence and integrity, was an intimate friend of Broderick, and was with him when the duel took place.* He remembers the incidents of that bloody affair with a vividness which the lapse of time can never efface. He says that when the seconds of the respective principals, and others with them, were huddled together selecting pistols, he and Broderick were together some distance away. When Broderick became apprised of the fact that Terry's seconds had brought to the ground a pair of duelling pistols, and that the seconds of the two principals were then engaged in casting lots for the choice of weapons, he seemed uneasy and expressed himself as not being able to understand how it was that the armorer, selected by mutual consent of the parties, and then standing apart, was not consulted, but seemed to be entirely ignored. Broderick had supposed the armorer was to provide the weapons for the occasion. He complained of the inefficiency of his seconds, who, he had become convinced, were not the equals of the seconds of his adversary. He spoke of them as children, and expressed apprehensions lest they might unwittingly "trade away his life."

It is evident that Broderick was not aware of Terry's acquaintance by practice with the pistols prior to the duel. The outspoken suspicions on the subject were withheld from him when on his dying bed. His experience with the weapon placed in his hands was to him a surprise and disappointment; for, while conscious that he could not recover, he told his friend, Moore, that he did not touch the trigger of the pistol as he raised it, but that the sudden movement in raising it caused it to explode before it was brought to a level.

Jo Beard's confession, the gunsmith's testimony, Dr. Ryer's, statement Broderick's dying declaration, and the detective captain's experiment, well establish the anomalous trigger qualities of the weapons, especially, as to the one assigned to Broderick. In addition to this direct proof are the circumstances of the production and selection by Terry and his friends of their favorite and cherished weapons, and their extreme care to secure the safer one for his use.

Terry's friend, Mr. O'Meara, states the fact to be that the respective parties mutually agreed upon the employment of the gunsmith as armorer for the Terry-Broderick duel. Of this fact there seems no reason for doubt. But on the ground, the armorer was required to stand aside, except that he was allowed to examine the pistols chosen, and to load the one handed over by Terry's seconds for Broderick's use.

Colonel William W. Gift was a democrat, reared in Tennessee under the immediate influence of General Andrew Jackson. He was widely known in California for his peculiar and forcible modes of expressing his opinions. Immediately after Broderick was shot down, he gave vent to his indignation, and denounced in strong language the management of the Terry party in their introduction and selection of the pistols in question for the purposes of the duel. He declared that Terry had told him that he himself owned the pistols,

* Mr. Moore, who died after this was written, was a Southern man.
—*EDITOR.*

Colonel Gift was a believer in the code, but regarded it as a system which required fair and equal dealing between parties engaged in "affairs of honor."

The evidence relating to the point under consideration is both direct and circumstantial, and from it the conclusion follows in logical sequence.

The great and fatal mistake of Broderick's seconds was in submitting to a negotiation which opened the door to the selection of any pistols not provided by the armorer, upon whom the respective parties had mutually agreed for the purpose. The arrangement to that effect operated to set aside the agreement mutually entered into to employ the gunsmith, Legardo, for the office of armorer. The death of Mr. Broderick, it is believed by many, was the consequence of this fatal mistake.

By persistent asservations, made in the face of the evidence to the contrary, the duel has been represented as fair and equal in all respects, and Broderick's seconds have contributed their full share to so represent it. Perhaps they thought so; but Broderick's friends have ever, with great unanimity, thought otherwise.

The personal treatment of Broderick from the beginning to the end by his antagonist, and his second, Benham, in arousing him from his sleep at the house of his friend at the dead hour of the night, and the mode and manner of the examination of his person on the field of the conflict, seemed designed to worry and wear him out, and to unnerve and unfit him for the ordeal in prospect. Added to such treatment, the introduction on the ground of the Aylette pistols, and their selection and distribution for the work in hand, made sure of Broderick's discomfiture and death.

——*THE EDITOR.*

LYNCH LAW IN CALIFORNIA

BY JOHN G. JURY

John G. Jury

LYNCH LAW *in* CALIFORNIA

"Out of this nettle, danger, we pluck this flower, safety."
—*Shakespeare.*

"An eye for an eye; a tooth for a tooth; a life for a life." Such is the law that first possesses the soul filled with a sense of outrage and frenzied with passion. "Whoso sheddeth man's blood, by man shall his blood be shed," is the Scriptural canon behind which vengeance has retreated since the days of the patriarchs. In no era of the world's history, it may be said, has action upon these primitive laws been more fervently upheld, than during the first decade of California's history as a State.

Attracted by the discovery of gold, men from all quarters of the globe flocked to California. Every moral, social and intellectual stage of society was represented in the mining camps of the State. Lawyers, physicians, clergymen, farmers, merchants and laborers in all fields of industry, left their homes for that land whose very name had suddenly become in all the earth, a synonym for opportunity and fortune.

An exodus into newly discovered fields, that offer wealth as the prize for hardship, is proverbially composed of all sorts and conditions of men. The industrious and the ambitious see in such a country the occasion for exercise of great physical, moral and intellectual vigor; the despairing are stimulated to new endeavors; the hopes of the down-trodden are revived; and the greed of the desperate and the vicious is inflamed. Thus the common love for wealth and power may be aroused either to encourage or to curse.

And so in California in early days, men of widely divergent types, possessed of radically different ideals, struggled side by side, having but one aim in common, the desire to acquire a fortune. An outcast from a foreign criminal colony might occupy the same room, eat at the same table, labor at the same vocation, and join in the same pastimes, with a young man who had come from one of the most refined homes in the East. This commingling of men, irrespective of education and of former habits of life, while affording

much of romance, could not but result occasionally in great and unexpected tragedies. Time must, where such conditions exist, be depended upon to reveal the true differences between men, and the ardor of the people in early California served to bring about rapid and startling revelations in this respect. As a young pioneer from Missouri once said, "If a man has a mean streak about a half an inch long, I'll be bound if it don't come out on the plains." The prevailing crudeness of life, the insecurity of tenure of valuable land rights, the prevalence of saloons, and the absence of women in the camps, tended, also, toward the encouragement of lawlessness and crime.

It is not to be expected that out of such a chaos of conditions, the swift and ever available measures of vengeance should not have occasionally been brought into use for the purpose of redressing great and execrable wrongs. The very exigencies of the times often demanded harsh and unusual measures. The machinery of the law was either unorganized, or lamentably imperfect, in those localities where there was most need for the service of the law. The customary restraints, which in long established and well organized communities, insure safety and order, were, for the time being, greatly weakened, and, apparently, in times of great popular passion, almost entirely absent. Family pride and social prestige were at first little thought of, for the reason that most of the early comers to the State regarded themselves as little more than sojourners in a distant and foreign land.

The pioneers in California were for the most part a law-creating and law-abiding people. Their sturdy independence, their virile hatred of crime in all its forms, and the habit they had cultivated of accomplishing things effectively, prompted the occasional use of ill-considered, and in particular instances it may be, of barbarous methods, in dealing with the criminal classes. No definite lines of demarcation can be traced between the various systems or measures devised by the pioneers for their government and protection. All conceivable gradations of justice existed, from the substantially fair and humane, to the most violent and fiendish in character. The particular quality of any special form of law is not, of course, revealed in its name. The term "lynch law" was seldom used because of the disrepute into which the term had fallen. The less harsh terms, such as "Miners' law," "Vigilance Committees," "Regulators," "Committees of Safety," etc., served to denominate the work of punishing offenders through the power of the people directly administered.

Some writers, however, have drawn a distinction between miners' law and lynch law. Mr. Shinn, for instance, in his work, "Mining Camps," (page 230), says: "Lynch law, as we know it, through certain too familiar newspaper items from a number of rural districts in our South and West, is sudden in its action, creates no true precedents, keeps no records, shuns the light, conceals the names of its ministers, is generally carried out in the night by a perfectly transient mob, expresses only popular passion, and is, in fine, essen-

tially disorderly. Miners' law was open in its methods, liked regularity of procedure, gave the accused a fair chance to defend himself, was carried out in broad daylight, and by men publicly chosen; and when State and county organizations were sufficiently developed to take its place, it gladly resigned its sceptre to the regular officers of the law."

It is evident that a better test, than that given by Mr. Shinn in the extract quoted above, must be applied to uncover the differences between lynch law and those forms to which lynch law is opposed. Consideration must be given in this connection to the special conditions existing in each community; the temper of its citizens; and its special rules and customs in the absence of any settled laws. It is, indeed, doubtful whether miners' law, as defined by Mr. Shinn, can stand the test he himself applies. That the difference between miners' law and lynch law is unsubstantial may be shown by reference to the miners' attitude respecting the settlement of land disputes. The crude sense of justice in the rough, self-reliant and honest miner prompted him to rebel against what was conceived to be the incursions and interferences of State and national laws and regulations. The miner's first impulse was to act for himself, irrespective of legislation, imposing the observance of certain formalities in acquiring mineral lands. In this, as in other matters, a *bona fide* compliance with the spirit of the laws, and substantial adherence to the customs of the camp, were sufficient to justify him in defending his land with his life if necessary.

The self-reliance and spontaneity of the pioneer miner sprang into boldest relief, however, when, under the general excitement following the commission of some atrocious crime, punishment must be devised and meted out to the offender. Miners' law, vigilance law, and their kindred forms, then revealed their true character. All such methods of dispensing justice, or of avenging wrongs, which are under the control of an unauthorized or self-appointed body of men, and dependent upon their judgment, whims and caprices, possess in reality the essential elements of lynch law. While many and perhaps the majority of vigilance and miners' trials, were orderly, and resulted in visiting upon criminals condign punishment, still the opportunities and temptations were ever present to misuse the power thus exercised.

Aside from what was deemed to be the chief justification for miners' law, etc.,—"the absolute and imperative necessity for its use,"—much of the favor in which such laws were held was probably due to the general indefiniteness of distinction which prevailed as to their real character and methods of procedure. And this endorsement was sometimes accorded by men in high places who would shudder at the thought of encouraging lynch law.

The lines between anti-vigilance and pro-vigilance men in the towns and cities throughout the State, were sharply drawn, and feeling between the two factions often became intensely bitter, resulting at times in open conflict. The pro-vigilance forces were necessarily in the majority in the cities and camps where vigilance or similar organizations existed.

Many California newspapers, during the early fifties, strongly defended miners' law upon the ground of necessity. The Sacramento *Transcript*, for example, on February 12, 1851, in commenting upon a case at Bridgeport, a town on Deer Creek, in which a dishonest partner was tried, convicted and sentenced to a severe flogging, says: "This is the only sure means of administering justice, and although we may regret, and deem lynch law objectionable, yet the present unsafe sort of prisons we have, and the lenity shown offenders, are such as to induce us to regard such an exercise of power with comparative lenity."

As representative of the views of the anti-vigilance element, General W. T. Sherman, who was in command of the Federal troops in San Francisco during the year 1856, that being the year in which the Vigilance Committee in that city held full sway, in a letter written at the suggestion of Justice Field in 1868, says: "You and I believe that with good juries, Casey, Cora, Hetherington and Brace could have been convicted and executed by due course of law. You and I believe that San Francisco had no right to throw off on other communities her criminal class, and that the Vigilance Committee did not touch the real parties who corrupted the legislature, and the local government. Again, if the good men of any city have the right to organize and assume the functions of government, the bad men have the same right if in the majority."

Lynch law appears to be rooted in the theory of the guilt of the accused from the time of his arrest. That most salutary rule of law that the defendant is presumed to be innocent until the contrary is proved, is subverted, and the door is thereby thrown open to prejudice, unfairness and error. When a hearing is given the accused by a lynching party it is conducted in the most perfunctory manner, and without regard for those principles of evidence founded in justice, and designed to clear the pathway to truth. The character of the punishment to be inflicted is left to the spontaneous and often cruel ingenuity of the crowd. The safeguards which the experiences of mankind have settled upon as being necessary to the proper administration of justice, are thus disregarded or swept aside in the excitement and haste which almost invariably characterize lynch law proceedings. Viewed from this standpoint, lynch law, miners' law and vigilance law, regardless of how orderly, or how violent their methods may have been, were essentially the same in character. In the full light of a righteous law the various forms which existed in California in defiance of the regularly constituted authorities, or in disregard for the principles of civilized jurisprudence, should all be classed in one category, and given one name, lynch law.

The uncontrollable lawlessness existing in many early California communities, and the lack or utter inefficiency of means for dealing regularly with such a condition of affairs, forced the pioneers to the use of extreme measures at times for the purpose of protecting life and property. In such exigencies,

lynch law in the minds of some found sufficient provocation if not reasonable justification. Only a fair understanding of the dangers prevailing in camp and city can serve as a basis for judgment upon the question whether the use of lynch law was ever justified as a means for suppressing or punishing crime.

It might be interesting to recount briefly a few chapters in the story of the struggle for order in California's early history, with the end in view of illustrating more specifically the character of lynch law, its methods and its results.

One of the first instances of the application of lynch law in California was in proceedings taken in January, 1849, from which Hangtown, now Placerville, derived the former name. The facts appear to be about as follows: Five men had been caught in the act of attempted robbery and larceny. The feeling of the miners ran high, as it generally did in cases of robbery, larceny and murder. No court, it seems, was organized in the town, hence, a provisional judge and jury were called to try the case. The proceedings were conducted in an orderly manner and the sentence rendered that the prisoners should be given thirty-nine lashes each. Hardly had the sentence been executed before other charges were presented against three of the men for robbery and attempt to murder, committed on the Stanislaus River in the previous autumn. A jury of all the miners in camp, about two hundred in number, heard the evidence and sentenced the unhappy prisoners to be hanged. Only one man seems to have protested against the sentence, but his protests were quieted under threats of death. The defendants suffered the penalty thus imposed upon them. The man who strenuously protested against the execution was Lieut. E. G. Buffum. The attitude of the miners toward Lieut. Buffum was prompted by anger and impatience, due perhaps to the fact, that, in their view, the prisoners had as fair a trial as the circumstances would warrant, and when the sentence was pronounced they would brook no delay. Although it may be said the punishment devised for the offenders was swift and merciless, yet even here is presented the beginnings of order; the regard for law is illustrated in the adherence, imperfect and prejudiced though it was, to those forms and methods of procedure with which the citizens were already acquainted.

Ford's Bar, on the middle fork of the American River, had, as early as May, 1849, acquired the reputation of being the worst place on the river. In the month indicated a drunken row between two of the miners occurred at this place. One of the combatants was struck so violently with a crowbar that he fell into the stream. The other followed, and the two infuriated men fought in the water. The fight almost resulted in a general combat between the friends of both parties. Better judgment prevailed, and after calm was restored, seeing that recurrences of such disgraceful scenes should be prevented, the men called a meeting and voluntarily agreed upon a few simple rules calculated to secure the peace and quiet of the camp. The code of laws

thus improvised provided for the trial of certain specified offenses by a jury consisting of three persons. It is amusing to read the first application of the law, thus devised, to the case of a tinker who had been arrested for assaulting a party with a junk bottle. His antagonist retaliated by drawing a knife and with it inflicting several severe cuts and gashes upon the tinker. Both men were arrested and taken before Alcalde Graham, who evidently was the leading spirit in the administration of justice in the camp. The tinker, although the offending party, was acquitted "because there was no law against using a bottle as a weapon," while his antagonist was convicted of unlawfully drawing a knife, an offense which had been expressly legislated upon in their simple code of laws. This incident illustrates in an amusing way the layman's view of the established principle of the common law, that criminal statutes must be strictly construed. It may be well imagined that the decision of the alcalde met with much disfavor in the camp, for ordinarily such refinements were given scant approval.

The feverish haste exhibited at lynch law proceedings may be illustrated by a case which occurred in Columbia, Tuolumne County, on Wednesday, October 10th, 1855. A man named John H. Smith became involved in a quarrel with the proprietress of a saloon, during which quarrel he was fatally shot by the husband of the woman, who, on coming from an adjoining room into the barroom where the quarrel was going on, fired upon and killed Smith. John S. Barclay was the name of the murderer. The direction given to the trial and other events which followed was determined principally by the attitude of James W. Coffroth, a popular man in the camps, who had just been elected to the State senate. Coffroth, in his regard for his deceased friend, allowed his passions to dominate. He vehemently demanded that vengeance be meted out to Barclay for the crime. The mob was stirred to frenzy by Coffroth. No thought, however, was entertained of visiting punishment upon the offender without a show at least of fairness. The crowd gathered about the jail, and a judge, marshal and jury of twelve persons were impressed into service. The iron doors were then forced open and Barclay, who had hoped to make his escape through the crowd, was seized and carried off by the excited people amid cries and imprecations. In the impromptu trial, Coffroth acted as the prosecuting attorney, and John Oxley, a man of firm and noble purposes, defended the prisoner. Coffroth was insistent upon revenge, and in his shrewd way invoked in behalf of the people, the law quoted at the head of this paper: "An eye for an eye; a tooth for a tooth; a life for a life." The text, "Whoso sheddeth man's blood, by man shall his blood be shed," was also used to lend strength and the semblance of sanctity to his case. Despite the protests of Oxley and his appeals to the people asking them to reflect on what they were about to do, amid cries for the life of the prisoner, Barclay was told to prepare himself for the execution which awaited him according to the sentence. The sheriff of the county, J. M. Stewart, made an ineffectual at-

tempt to rescue the prisoner, but was beaten back and hustled away from the scene. While the sheriff was thus being fought off the prisoner was hanged. His arms were left unpinioned. His convulsive clutching at the rope while hanging in mid-air, were greeted with derisive cries and yells from those who looked on. This in brief is the story of one of the most barbarous cases in the annals of lynch law.

Another extreme case was that of the lynching of a woman for the crime of murder committed on July 5th, 1851, at Downieville. The story of this revolting case is told by Mr. Hittell in his excellent history of California (Vol. 3, page 307), as follows:

> "It was one of the sequels of a great Fourth of July celebration. John B. Weller, afterwards Governor of the State, had been announced to deliver an address, and a very large crowd congregated to hear him—the miners and settlers coming in from all the camps in the neighborhood. After the regular exercises of the day, there was much drinking and carousing; and in the evening, when it began to grow dark, a number of the revelers started out staggering through the streets, hooting and howling, beating on houses and breaking open doors here and there as they went. Among other places attacked was a house occupied by a Mexican woman called Juanita and a countryman of hers, who kept a monte table. One of the revelers, and perhaps the most hilarious of them, was a Scotchman of large size and great physical strength, known as Jack Cannon. He seems to have been acquainted with the woman, or at any rate went to make her a visit the next morning. Some said his object was to apologize and pay for any damage he had done; but this does not appear to be probable. Whatever his object may have been, he was seen to go up to the door, where the woman and her Mexican friend were standing, and was heard to address her with a vulgar expression. She immediately turned back into the house and entered a side room, leaving Cannon leaning with a hand on each side of the doorway, conversing with the man. In a moment afterwards, however, she came back, holding one hand behind her, and rushing forward she plunged a long knife with all her strength into Cannon's breast and killed him."
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> "The news of the homicide spread like wild-fire. It took but a little time for an immense crowd to collect. They were not fully over the effects of their dissipation of the day before; but their excitement took a new direction; and it was now for vengeance on the murderer of Jack Cannon, who had been a jolly good fellow and popular with everybody. On the first indication of this feeling, the woman had left her own house and entered the saloon of one Craycroft for protection. But the crowd soon surrounded Craycroft's, and, seizing the woman, carried her to the main plaza of the town, where the stand erected for the exercises of the day previous still remained. Her Mexican friend continued with her, while the body of Cannon was exposed in a tent near by. Upon arriving at the plaza, the first things done by the crowd were to select a judge and jury and appoint counsel for the people and the defendant respectively. There was little for the prosecution to do; but the attorney for the defense received very bad treatment. Seeing that he could say nothing of importance in reference to the killing, he confined himself to the enormity of hanging a woman, and put that enormity in so strong a light that the mob became maddened and kicked the barrel on which he stood, from under him—his hat going one way and his spectacles another, while he himself was carried at least a hundred yards, hustled from side to side, before he touched the ground. Next a doctor, named C. D. Aiken, attempted to save the woman by claiming that she was about to become a mother; but as is usual on such occasions, other doctors were found to express a directly contrary opinion; and the result was

that Dr. Aiken was ordered to leave Downieville, and found it safest to do so. The infuriated crowd would evidently suffer nothing to be said or done in favor of their victim, and would brook no opposition to their predetermination to be avenged. The end was not long coming. The jury in a very short time returned a verdict of guilty; and the judge, without waiting to be prompted by the crowd, sentenced the woman to be hanged. She was given only an hour to prepare for death, while arrangements were made on what was known as Jersey bridge for her execution. A rope was fastened on one of the projecting upper timbers, while beneath it a plank, six inches wide, was pushed out over the stream and lashed to the floor timbers of the bridge. At the end of the hour the woman was brought to the place and stationed on the plank. There were several thousand spectators present. The woman, of course, knew what was coming; but she appears to have been perfectly cool and collected. She surveyed the crowd and spoke pleasantly to several of her acquaintances. She took off her hat and handed it to one of them, bidding him good-bye in Spanish. She then took in her own hands the rope that was being thrown over her neck and adjusted it beneath her black hair. A white handkerchief was fastened over her face; her hands were tied behind her; and at each side of the plank behind her a man, ax in hand, stood ready to cut the lashings. At the report of a pistol, which had been agreed upon as a signal, down came the axes; the plank dropped, and Juanita fell three or four feet, and remained suspended. Consciousness was apparently extinguished instantaneously upon the fall; and death was rapid."

Perhaps the best organized and least objectionable form of lynch law was that exhibited by the Committee of Vigilance of San Francisco, organized June 9th, 1851, and reorganized May 14, 1856. There had been vigilance committees in other towns in the State, yet that which was formed in San Francisco on the dates given above undoubtedly deserves the reputation of being the best conducted and most strikingly impressive organization of the people for dealing with crime, outside of the regular courts of justice, that has ever been established in any age or place. It has been said of a vigilance committee that it will itself break the law, but it does not allow others to do so. The doctrine of vigilance, as of lynch law in general, is based upon the theory that the people have the right to hold perpetual vigil over all their institutions and to correct, where necessary, abuses and corruption which threaten the security of their lives and property. It is civil revolution as opposed to civil rebellion. This right, if such it be, may be exercised, it is claimed, in the extremity of necessity arising out of the prevalence of crime and the immunity of law-breakers from punishment. Vigilance proceeds upon the principle that if the law is notoriously inadequate to reach and efficiently punish law-breakers, it would be a greater crime and wrong upon the public to permit such lawlessness and corruption, than to supersede the recognized authorities by a new organization which shall deal more effectively with such evils, than the courts through venality, or some other weakness, are able to do.

The stern judgments reached by the Vigilance Committees in San Francisco were characterized by unselfishness, and above all by an unquestionable solicitude for the public welfare. Yet even this organization, made up for the most part of good citizens, could not find more than passing favor among

the citizens of the State. Only the greatest necessities evolved from the conditions of the times, could warrant the creation or existence of a tribunal of men whose work was so revolutionary in its purposes and results.

The double executions of James P. Casey and Charles Cora on May 22, 1856, and that of James Hetherington and Philander Brace on July 29th, in the same year, were most spectacular exhibitions of the method in which the Vigilance Committee of San Francisco dealt with the city's criminals. These men were tried by the Vigilance Committee for henious offenses, convicted and sentenced to be hanged. The terrible earnestness of the committee and the expedition shown by it in dealing with these representatives of the most depraved and desperate class that have ever infested any city in America, gave rise to almost revolutionary conditions, Though bitterly opposed by the regularly constituted State and city authorities, the Vigilance Committees of San Francisco were instrumental in putting a stop to street murders, lawlessness at elections and in effectually lessening corruption in the courts. These results in San Francisco, and similar results reached elsewhere throughout the State, stand as the sole justification for the existence of organizations based necessarily upon the doctrine that the safer and less violent methods afforded by courts of justice must, when notoriously inefficient, be either undermined or entirely superseded by force.

The most conspicuous weakness of lynch law proceedings is probably found in the haste and lack of deliberation shown in the treatment of criminals. The fact that the culprit was tried in most instances while the passions of the people were at white heat, militated against justice and provoked the infliction of cruel and unusual punishments. The modern evil of procrastination in dealing with criminals finds its opposite in the precipitance manifested in the early history of crime in our State. Both methods are reprehensible. As civilized society has always shrunk from punishing the innocent, the extreme care taken in this respect has often resulted in a failure to punish the guilty. On the other hand, where proceedings are irregular and overhasty, the greater danger that the innocent be made to suffer is ever imminent.

The temptation to magnify the spectacular events in the life of a people, and to correspondingly minify the less conspicuous, yet equally if not more important happenings, is so strong, that treatment of a subject such as that now under consideration, is likely to lead to exaggerated and false ideas. Notwithstanding the prevalence of crime—the common curse in new gold fields,—California from almost the day of its birth as a State was firmly established upon the fundamental principles of civilization. It has been said that "the courts of justice in California, were in early times equal, if not superior to those of any border settlement founded since the days of Justinian"; and, if since the days of Justinian, may it not be truly said for all time?

In almost all the mining settlements of the State during the winter of 1849-50, an alcalde was chosen to preside at trials and also at lynch law pro-

ceedings. Mr. Hittell, in his work on the history of California, says in this connection: "In the absence of regular law, and on account of the unsettled state of the country, the authority he (the alcalde) exercised was very extensive and sometimes arbitrary; but he could only hold his office so long as his action gave satisfaction to the community; and he was consequently restrained from committing any great excesses. On the other hand, the miners in general treated him with respect. He was the general conservator of the peace and preserver of order, and in many and perhaps the majority of camps, where the office was filled by a quiet, firm and unobtrusive man, there was as good security and as complete protection to life, limb, property and personal rights as anywhere else in the world."

No trace of general disorder in California can be surmised from reading the records and decisions of the courts, no indications of anarchy, or of a state of social being different from that of the then most enlightened states of the East. Genius directed the destinies of California from the time her gold fields attracted the attention of the world. Her early jurists, lawyers, statesmen, orators, literary men and organizers of industry, were men of large purposes, of lofty ideals, and of untiring, creative energy. The erudite and fearless Field; that intellectual storm-cloud, Terry; the modest, eloquent and soulful Baker; the able McAllister; the brilliant and eccentric Lockwood; the industrious Haymond; the wise and genial Baldwin; all were representatives of types which have created for California, in the annals of government and law, fame and substantial eminence as a highly civilized state. Names prominent in other branches of public activity might be added to the list, but those given will illustrate the conspicuous wealth of ability in California from the date of her entry into the Union.

Forgetting the reactionary effect scenes of violence exert upon those who take part in them, remembering the sacrifices the pioneers of California were ever ready to make, and remembering, also, their honesty of purpose, their fervor and hopes, may it not be said that even their faults illustrate the zeal they put into their lives, their intense hatred of crime, and the desire, completely obscured though it often may have been, to establish order and exalt justice in the land they soon learned to love.

——*JOHN G. JURY.*

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THE HISTORY OF THE MINING LAWS OF CALIFORNIA

BY HON. JOHN F. DAVIS

John F. Davis

The HISTORY of the MINING LAWS of CALIFORNIA

One of the most interesting chapters in Pliny, who wrote his Natural History shortly after the time of Christ, is that in which he describes the different methods of mining operations in vogue in his time.

"Gold is found in our part of the world," says this classical author, "not to mention the gold extracted from the earth in India by the ants, and in Scythia by the griffins. Among us it is procured in three different ways: the first of which is in the shape of dust, found in running streams, the Tagus in Spain, for instance, the Padus in Italy, the Hebrus in Thracia, the Pactolus in Asia, and the Ganges in India. Indeed, there is no gold found in a more perfect state than this, thoroughly polished as it is by the continual attrition of the current.

"A second mode of obtaining gold is by sinking shafts or seeking it among the debris of the mountains, both of which methods it will be well to describe. The persons in search of gold in the first place remove the 'segutilum,' such being the name of the earth which gives indication of the presence of gold. This done, a bed is made, the sand of which is washed, and according to the residue found after washing, a conjecture is formed as to the richness of the vein. Sometimes, indeed, gold is found at once in the surface earth, a success, however, but rarely experienced. Recently, for instance, in the reign of Nero, a vein was discovered in Dalmatia, which yielded daily as much as fifty pound weight of gold. The gold that is thus found in the surface crust is known as 'talutium,' in cases where there is auriferous earth beneath. The mountains of Spain, in other respects arid and sterile, and productive of nothing whatever, are thus constrained by man to be fertile, in supplying him with this precious commodity.

"The gold that is extracted from shafts is known by some persons as 'canalicium,' and by others 'canaliense.' It is found adhering to the gritty crust of marble, and altogether different from the form in which it sparkles in the

sapphirus of the East, and in the stone of Thebais and other gems, it is seen interlaced with the molecules of the marble. The channels of these veins are found running in various directions along the sides of the shafts, and hence the name of the gold they yield, 'canalicium.' In these shafts, too, the superincumbent earth is kept from falling in by means of wooden pillars. The substance that is extracted is first broken up and then washed, after which it is subjected to the action of fire and ground to a fine powder. This powder is known as 'apitascudes', while the silver which becomes disengaged in the furnace has the name of 'sudor' given to it. The impurities that escape by the chimney, as in the case of all other metals, are known by the name of 'scoria.' In the case of gold, this scoria is broken up a second time and melted over again. The crucibles used for this purpose are made of 'tasconium,' a white earth similar to potter's clay in appearance, there being no other substance capable of withstanding the strong current of air, the action of the fire, and the intense heat of the melted metal.

"The third method of obtaining gold surpasses the labors of the giants even. By the aid of galleries driven to a long distance, mountains are excavated by the light of torches, the duration of which forms the set times for work, the workmen never seeing the light of day for many months together. These mines are known as 'arrugiæ,' and not unfrequently the clefts are formed on a sudden, the earth sinks in, and the workmen are crushed beneath; so that it would really appear less rash to go in search of pearls and purples at the bottom of the sea, so much more dangerous to ourselves have we made the earth than the water. Hence it is that in this kind of mining, arches are left at frequent intervals for the purpose of supporting the weight of the mountain above. In mining either by shaft or by gallery, barriers of silex are met with, which have to be driven asunder by the aid of fire and vinegar, or more frequently, as this method fills the galleries with suffocating vapors and smoke, to be broken to pieces with bruising machines shod with pieces of iron weighing one hundred and fifty pounds; which done, the fragments are carried out on the men's shoulders, night and day, each man passing them on to his neighbor in the dark, it being only those at the pit's mouth that ever see light. In cases where the bed of silex appears too thick to admit of being penetrated, the miner traces along the sides of it, and so turns. And yet, after all, the labor entailed by this silex is looked upon as comparatively easy, there being an earth—a kind of potter's clay mixed with gravel—'gangadia' by name, which it is almost impossible to overcome. This earth has to be attacked with iron wedges and hammers, like those previously mentioned, and it is generally considered that there is nothing more stubborn in existence—except, indeed, the greed for gold, which is the most stubborn of all things.

"When these operations are completed, beginning at the last, they cut away the wooden pillars at the point where they support the roof. The coming downfall gives warning, which is instantly perceived by the sentinel, and by

him only, who is set to watch upon a peak of the same mountain. By voice as well as by signals, he orders the workmen to be immediately removed from their labors, and at the same moment takes flight himself. The mountain, rent to pieces, is cleft asunder, hurling its debris to a distance with a crash which it is impossible for the human imagination to conceive; and from the midst of a cloud of dust, of a density quite incredible, the victorious miners gaze upon this downfall of nature. Nor yet even then are they sure of gold, nor, indeed, were they by any means certain that there was any to be found when they first began to excavate, it being quite sufficient, as an inducement to undergo such perils and to incur such vast expense, to entertain the hope that they will obtain what they so eagerly desire.

"Another labor, too, quite equal to this, and one which entails even greater expense, is that of bringing rivers from the more elevated mountain heights, a distance, in many instances, of one hundred miles, perhaps, for the purpose of washing the debris. The channels thus formed are called 'corrugi' from our word 'corrivatio,' I suppose; and even when these are once made they entail a thousand fresh labors. The fall, for instance, must be steep, that the water may be precipitated, so to say, rather than flow; and it is in this manner that it is brought from the most elevated points. Then, too, the valleys and crevasses have to be united by the aid of aqueducts, and in another place impassable rocks have to be hewn away and forced to make room for hollowed troughs of wood, the persons hewing them hanging suspended all the time with ropes, so that to a spectator who views the operations from a distance, the workmen have all the appearance, not so much of wild beasts as of birds upon the wing. Hanging thus suspended in most instances, they take the levels, and trace with lines the course the water is to take; and thus, where there is no room, even for man to plant a footstep, are rivers traced out by the hand of man.

"The water, too, is considered in an unfit state for washing if the current of the river carries any mud along with it. The kind of earth that yields this mud is known as 'wrium,' and hence it is that in tracing out these channels, they carry the water over beds of silex or pebbles, and carefully avoid this wrium. When they have reached the head of the fall, at the very brow of the mountain, reservoirs are hollowed out a couple of hundred feet in length and breadth, and some ten feet in depth. In the reservoirs there are generally five sluices left, about three feet square; so that the moment the reservoir is filled, the flood gates are struck away and the torrent bursts forth with such a degree of violence as to roll onward any fragments of rock which may obstruct its passage.

"When they have reached the level ground, too, there is still another labor that awaits them. Trenches—known as 'agogoe'—have to be dug for the passage of water; and these, at regular intervals, have a layer of ulex placed at the bottom.

"This ulex is a plant like rosemary in appearance, rough and prickly, and

well adapted for arresting any pieces of gold that may be carried along. The sides, too, are closed in with planks, and are supported by arches when carried over steep and precipitous spots. The earth carried onward in the stream, arrives at the sea at last, and thus is the shattered mountain washed away—causes which have greatly tended to extend the shores of Spain by these encroachments upon the deep. It is also by the agency of canals of this description that the material, excavated at the cost of such immense labor by the process previously described, is washed and carried away, for otherwise the shafts would soon be choked up by it.

"The gold found by excavating with galleries does not require to be melted, but is pure gold at once. In these excavations, too, it is found in lumps, as also in the shafts which are sunk, sometimes exceeding ten pounds even. The names given these lumps are 'palagæ,' and 'palacurnæ,' while the gold found in small grains is known as 'baluce.' The ulex that is used for the above purpose is dried and burnt, after which the ashes of it are washed upon a bed of grassy turf, in order that the gold may be deposited thereupon."

The glimpse given us by this chapter makes all the keener our regret that the works of Theophrastus and Philo on metals and that of Strabo on machines and methods of parting metals, are unfortunately lost forever. Had the library at Alexandria not been burned, who shall say that we might not have found for our legal doctrine of the "extralateral right" in quartz mining some more ancient prototype than the earlier mining codes of Prussia or the customs of the lead mines of Derbyshire?

DISCOVERY OF GOLD IN CALIFORNIA.

On the 4th day of May, 1846, Thomas O. Larkin, United States consul at Monterey, in an official letter to James Buchanan, then secretary of state, wrote as follows: "There is no doubt but that gold, silver, quicksilver, copper, lead, sulphur, and coal mines are to be found all over California, and it is equally doubtful whether, under their present owners, they will ever be worked." On the 7th of July, 1846, sixty-four days later, Commodore Sloat raised the American flag at Monterey.

James W. Marshall made the discovery of gold in the race of the sawmill at Coloma in the latter part of January, 1848. Thereupon took place an incident of history which demonstrated that Jason and his companions were not the only Argonauts who ever made a voyage to unknown shores in search of the golden fleece. The first news of the discovery almost depopulated the towns and ranches of California and even affected the discipline of the small army of occupation. The first winter brought thousands of Oregonians, Mexicans, Kanakas and Chilenos. The extraordinary reports that reached the East were at first disbelieved, but when the private letters of army officers and men in authority were published an indescribable gold fever took possession of the nation east of the Alleghanies. All the energetic and daring, all the physically

sound of all ages, seemed bent on reaching the new El Dorado. The old Gothic instinct of invasion seemed to survive and thrill in the fibre of our people, and the camps and gulches and mines of California witnessed a social and political phenomenon unique in the history of the world, the spirit and romance of which have have been immortalized in the pages of Bret Harte. Before 1850 the population of California had risen from 15,000, as it was in 1847, to 100,000, and the annual average increase for six years thereafter was 50,000.

A COMMUNITY WITHOUT CIVIL LAW.

At the time of Marshall's discovery the United States was still at war with Mexico, its sovereignty over the soil of California not yet recognized by the latter. The treaty of Guadalupe Hidalgo was not concluded till February 2nd, the ratified copies thereof not exchanged at Queretaro till May 30th, and the treaty not proclaimed till July 4th, 1848.

On the 12th of February, 1848, ten days after the signing of the treaty of peace, and about three weeks after the discvovery of gold at Coloma, Colonel Mason did the pioneers a signal service by issuing as Governor the proclamation concerning the mines, which at the time was taken as finality and certainty as to the status of mining titles in their international aspect: "From and after this date, the Mexican laws and customs now prevailing in California, relative to the denouncement of mines, are hereby abolished." Although, as the law was fourteen years afterwards expounded by the United States Supreme Court (U. S. vs. Castellero, 2 Black, 18-371), the act was unnecessary as a precautionary measure, still the practical result of the timeliness of the proclamation was to prevent attempts to found private titles to the new discoveries of gold on any customs or laws of Mexico.

Meantime, and, in fact, until her admission into the Union as a State, California was governed by military authorities (Cross vs. Harrison, 16 How. U. S. 191). Except to provide for the delivering and taking of mails at certain points on the Coast, no federal act was passed with reference to California in any relation; in no act of Congress was California even mentioned after its annexation, until the Act of March 3d, 1849, extending the revenue laws of the United States "over the territory and waters of Upper California, and to create certain collection districts therein." Though in this act incidentally the new acquisition is called a "territory," no act of congress was ever passed erecting a territorial form of government in California. The Act of March 3d, 1849, not only did not extend the general laws of the United States over California, but did not even create a local tribunal for its enforcement, but provided that the District Court of Louisiana and the Supreme Court of Oregon should be courts of original jurisdiction to take cognizance of all violations of its provisions. Not even the Act of the 9th of September, 1850, admitting California into the Union, extended the general laws of the United States over the State by express provision. Not until the Act of September

28th, 1850, establishing a District Court in the State, was it enacted by congress "that all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California, as elsewhere within the United States."

FREE MINING.

Though no general federal laws were extended by the Congress over the late acquisitions from Mexico for more than two years after the end of the war, the paramount title to the public lands had vested in the federal government by virtue of the provisions of the treaty of peace, and the public land itself had become part of the public domain of the United States. (The Supreme Court of California did afterward, when first organized, in Hicks vs. Bell, 3 Cal., 219, attempt by certain *obiter dicta* to put forth the doctrine of the paramount title being in the State of California, but this attempt at judicial legislation was soon after abandoned and reversed.) The army of occupation, however, offered no opposition to the invading army of prospectors. The miners were in 1849 twenty years ahead of the railroad and the electric telegraph and the telephone had not yet been invented. In the parlance of the times, the prospectors "had the drop on the army." In Colonel Mason's unique report of the situation that confronted him, discretion waits upon valor. "The entire gold district," he wrote, "with few exceptions of grants made some years ago by the Mexican authorities, is on land belonging to the United States. It was a matter of serious reflection with me how I could secure to the government certain rents or fees for the privilege of procuring this gold; but upon considering the large extent of the country, the character of the people engaged, and the small scattered force at my command, I am resolved not to interfere, but permit all to work freely." It is not recorded whether the resolute Colonel was conscious of the humor of his resolution.

"Persons who have not given this subject special attention," said Senator Stewart of Nevada, addressing the United States Senate in support of the Bill of 1866, "can hardly realize the wonderful results of this system of free mining. The incentive to the pioneer held out by the reward of a gold or silver mine, if he can find one, is magical upon the sanguine temperament of the prospector. For near a quarter of a century a race of men, constituting a majority by far of all the miners of the West, patient of toil, hopeful of success, deprived of the associations of home and family, have devoted themselves, with untiring energy, to sinking deep shafts, running tunnels thousands of feet in solid granite, traversing deserts, climbing mountains, and enduring every conceivable hardship and privation, exploring for mines, all founded upon the idea that no change would be made in this system that would deprive them of their hard-earned treasure. Some of these have found valuable mines, and a sure prospect of wealth and comfort when the appliances of capital and machinery shall be brought to their aid. Others have received no compensation but anticipation—no reward but hope. . . . I assert, and no one familiar

with the subject will question the fact, that the sand plains, alkaline deserts, and dreary monuments of rock and sagebrush of the great interior, would have been as worthless today as when they were marked by geographers as the Great American Desert, but for this system of free mining fostered by our own neglect, and matured and perfected by our generous inaction."

CALIFORNIA COMMON LAW OF MINES.

The prospectors and miners were, then, at the start, simply trespassers upon the public lands as against the government of the United States, with no laws to guide, restrain or protect them, and with nothing to fear from the military authorities. They were equal to the occasion. "Finding themselves far from the legal traditions and restraints of the settled East," says the report of the Public Lands Commission of 1880, "in a pathless wilderness, under the feverish excitement of an industry as swift and full of chance as the throwing of dice, the adventurers of 1849 spontaneously instituted neighborhood or district codes of regulations, which were simply meant to define and protect a brief possessory ownership. The ravines and river bars which held the placer gold were valueless for settlement or home-making, but were splendid stakes to hold for a few short seasons and gamble with nature for wealth or ruin.

"In the absence of State and Federal laws competent to meet the novel industry, and with the inbred respect for equitable adjustments of rights between man and man, which is the inheritance of centuries of English common law, the miners only sought to secure equitable rights and protection from robbery by a simple agreement as to the maximum size of a surface claim, trusting, with a well-founded confidence, that no machinery was necessary to enforce their regulations other than the swift, rough blows of public opinion. The gold-seekers were not long in realizing that the source of the dust which had worked its way into the sands and bars, and distributed its precious particles over the bed-rocks of rivers, was derived from solid quartz veins, which were thin sheets of mineral material inclosed in the foundation rocks of the country. Still in advance of any enactments by legislature or congress, the common sense of the miners, which had proved strong enough to govern with wisdom the ownership of placer mines, rose to meet the question of lode claims, and decreed that ownership should attach to the thing of value, namely, the thin, sheet-like veins of quartz, and that a claim should consist of a certain horizontal block of the vein, however it might run, but extending indefinitely downward with a strip of surface, on or embracing the vein's outcrop, for the placing of necessary machinery and buildings. Under this theory, the lode was the property, and the surface became a mere easement.

"This early California theory of a mining claim, consisting of a certain number of running feet of vein with a strip of land covering the surface length of the claim, is the obvious foundation for the federal legislation and present system of public disposition and private ownership of the mineral lands west of the Missouri River. Contrasted with this is the mode of disposition of

mineral-bearing lands east of the Missouri River, where the common law has been the one rule, and where the surface tract has always carried with it all minerals vertically below it.

"The great coal, iron, copper, lead, and zinc wealth east of the Rocky mountains, have all passed with the surface titles, and there can be little doubt that if California had been contiguous to the eastern metallic regions, and its mineral development progressed naturally with the advance of home-making settlements, the power of common law precedent would have governed its whole mining history. But California was one of those extraordinary historic exceptions that defy precedent and create original modes of life and law. And since the developers of the great precious metal mining of the far West have for the most part swarmed out of the California hive, California ideas have not only been everywhere dominant over the field of industry, but have stemmed the tide of federal land policy and given us a statute-book with English common law in force over half the land and California common law ruling in the other."

"The discovery of gold in California," says Justice Field, speaking from the Supreme Bench of the United States, "was followed, as is well known, by an immense immigration into the State, which increased its population within three or four years from a few thousand to several hundred thousand. The lands in which the precious metals were found belonged to the United States, and were unsurveyed and not open by law to occupation and settlement. Little was known of them further than that they were situated in the Sierra Nevada mountains. Into these mountains the emigrants in vast numbers penetrated, occupying the ravines, gulches and canyons and probing the earth in all directions for the precious metals. Wherever they went they carried with them the love of order and system of fair dealing which are the prominent characteristics of our people. In every district which they occupied they framed certain rules for their government, by which the extent of ground they could severally hold for mining was designated, their possessory right to such ground secured and enforced, and contests between them either avoided or determined. These rules bore a marked similarity, varying in the several districts only according to the extent and character of the mines; distinct provision being made for different kinds of mining, such as placer mining, quartz mining, and mining in drifts or tunnels. *They all recognized discovery*, followed by appropriation, as the foundation of the possessor's title, and development by working as the condition of its retention. And they were so framed as to secure to all comers within practicable limits absolute equality of right and privilege in working the mines. Nothing but such equality would have been tolerated by the miners, who were emphatically the law-makers, as respects mining upon the public lands in the State. The first appropriator was everywhere held to have, within certain well-defined limits, a better right than others to the claims taken up; and in all controversies, except as against the government, he was regarded as the original owner, from whom title was to be

traced. * * * These regulations and customs were appealed to in controversies in the State Courts, and received their sanction; and properties to the value of many millions rested upon them. For eighteen years, from 1848 to 1866, the regulations and customs of miners, as enforced and molded by the Courts and sanctioned by the legislation of the State, constituted the law governing property in mines and in water on the public mineral lands."

Jennison vs. Kirk, 98 U. S. 453.

ORIGIN OF RULES AND REGULATIONS.

There is considerable difference of opinion whether these rules and regulations were the spontaneous creation of the miners of "'49 and the spring of '50." Mr. Gregory Yale, in his valuable treatise on "Mining Claims and Water Rights," contends that they are not, and claims that Senator Stewart of Nevada, in his brilliant letter to Senator Ramsey, of Minnesota, ascribes undeserved merit to the early miners in pronouncing them the authors of the local rules and customs. He does not, however, criticise the even more positive language of Chief Justice Sanderson in the decision of the case of Morton vs. Solambo Copper Mining Company. He calls attention to the similarity between these rules and regulations and certain features of the Mexican ordinances, of the Spanish Code, of the regulations of the Stannary Convocations among the tin bounders of Devon and Cornwall, and of the High Peak Regulations for the lead mines of Derby. He says in the earlier days of placer digging in California the large influx of miners from the western coast of Mexico and from South America dictated the system of work to Americans: that the latter, with few exceptions from the gold mines of North Carolina and Georgia, and from the lead mines of Illinois and Wisconsin, were almost entirely inexperienced in this branch of industry; that the Cornish miners soon spread themselves through the State, and added largely by their experience, practical sense, and industrious habits, in bringing the code into something like shape. With all deference due to any opinion expressed by Mr. Yale, it appears to me that he has in this chapter failed sometimes to distinguish between the practical work in mining taught the pioneers by their Mexican, Chilenian and Cornish associates and their comrades from the southern gold, and western lead states, and the framing of rules and regulations. The hints and suggestions on the pan and rocker, and long tom and sluice, do not necessarily include instructions on a code of mining in a situation absolutely as novel to the persons from whom they learned how to mine as it was to the pioneers themselves. The mining land in North Carolina, Georgia, Illinois and Wisconsin is all held under principles founded on the common law of England. Nor is it necessary to hold with Mr. Yale and General Halleck that the Mexican system was the foundation for the rules and customs adopted, for in the matter of lode claims that system is the direct antithesis of the California system, the former recognizing vertical planes through the exterior

boundaries and the latter recognizing the extra-lateral right. The mere fact that the Mexican system recognized discovery as the source of title and development as the condition of holding it, need not cause us to jump to the conclusion that in these respects the rules and customs of Californians were a conscious imitation of the Mexican system, especially when the two systems are so radically dissimilar in other points. In a region where the only title could be possessory, and possibly temporary, under the law, what other arrangement in these respects than the one adopted could have suggested itself to the pioneers? May it not be simply another illustration of the fact that, with the same problem and the same environment, the human mind has in different ages often arrived at the same practical solution. Even the idea of the story of the Jumping Frog of Calaveras need not necessarily be deemed a conscious imitation of its Boeotian prototype.

The California pioneers who were Americans did not have to learn the science of organization from their foreign associates. The instinct of organization was a part of their heredity. Professor Macy, of Johns Hopkins University, once wrote: "It has been said that if three Americans meet to talk over an item of business, the first thing they do is to organize." This trait is as characteristic as the one of periodically saving the country by assembling in mass meeting and passing resolutions. Californians were not the first American early settlers upon the public domain of the United States who were left for a time without statutory law, federal or local. The institutional beginnings of more than one western state, notably of Wisconsin and Iowa, furnish a most interesting parallel, and the groundwork of their rules and regulations, except with regard to the extra-lateral right in mining, are in many respects absolutely identical. The lead miners of Dubuque who on the 17th of June, 1830, assembled around an old cottonwood log, stranded on an island, and appointed a committee of five miners to draw up regulations for their government, would have been surprised to be told in after years that the rules they framed had any other source for their inspiration than the courage, the necessities and the resourcefulness of intelligent frontiersmen.

EARLY RULES AND REGULATIONS.

"In the early days of placer mining," says Mr. Hittell, in his 'History of California,' Vol. 3, Page 252, "it was not uncommon to fix the size of a claim at ten feet square; but it was only in very rich ground that this quantity was found to be sufficient. In poorer localities or where ground had been once partially worked, the size was usually one hundred feet square, though there were many variations according to circumstances—the idea in each case being to afford every man a fair chance to accumulate wealth and with this object in view to give him as much ground as he could possibly use. The next provision—and a remarkable and important one—was that the claim could only be held while it was being reasonably worked. It was usual to provide that

when a claim was taken up, stakes should be driven at the corners or written notices of appropriation posted up or an entry made in a record book open to the public; and sometimes several of these modes or others equally efficacious in giving information were required; but in all cases the fee of the land was regarded as belonging to the government, and no person could acquire any ownership beyond the mere use for mining purposes and that only while being so used. A very common condition was that a certain amount of work should be done within a specified time, sometimes a certain amount every week during the mining season; or otherwise that the claim should be liable to be taken up by anybody else. So, also, if a person went away from his claim without leaving his tools or some other understood evidence of an intention of returning and resuming work. Here, again, it was the same principle of the equality of every man and his right to an equal chance with his fellows; on the one hand securing him in his possession and the fruits of his labor, but on the other hand offering to each of his fellows the same privilege, if he failed to make use of them. The condition under which claims could be held and the circumstances under which they could be forfeited, together with the size of the claims and the manner of settling disputes, constituted the chief points embraced in what were known as the mining laws or mining customs. There were, of course, variations in different localities. In most cases the first discoverer or locator of a mining region was entitled to more ground than any other miner, generally to twice as much; and in many cases, special provisions were made about sales and purchase of claims and the authentication of bills of sale, which were the usual instruments by which claims were conveyed.

"Obviously no customs or laws could be adopted without some kind of consensus or assent on the part of the mining community. This was at first generally merely the agreement of the particular company or camp, which might have its own separate and distinct rules and regulations different from all its neighbors; but by degrees meetings of the miners of different camps and at length of whole neighborhoods were held, until finally it became common to form what are known as mining districts, embracing large tracts of territory and to adopt laws applicable to and effective throughout the whole territory so included. * * * And there were a great many hundreds of them. Nearly every bar, flat and gulch had its separate rules. Their jurisdictions were frequently changed, some consolidating into large districts and others dividing into smaller ones—the changes being dependent chiefly upon the character as to homogeneousness or otherwise of the mining region embraced and the convenience for the miners of access to a common place of meeting."

DESCRIPTION OF RULES AND REGULATIONS.

Mr. Ross Browne, in his preliminary report on the Mineral Resources of the West, made in 1867 (p. 226), in describing the nature of these regulations, says:

"It is impossible to obtain, within the brief time allowed for this preliminary

report, a complete collection of the mining regulations, and they are so numerous that they would fill a volume of a thousand pages. There are not less than five hundred mining districts in California, two hundred in Nevada, and one hundred each in Arizona, Idaho and Oregon, each with its set of written regulations. The main objects of the regulations are to fix the boundaries of the district, the size of the claims, the manner in which claims shall be marked and recorded, the amount of work which must be done to secure the title, and the circumstances under which the claim is considered abandoned and open to occupation by new claimants. The districts usually do not contain more than a hundred square miles, frequently not more than ten, and there are in places a dozen within a radius of ten miles. In lode mining, the claims are usually two hundred feet long on the lode; in placers the size depends on the character of the diggings and the amount of labor necessary to open them. In hill diggings, where the pay dirt is reached by long tunnels, the claim is usually a hundred feet wide, and reaches to the middle of the hill. Neglect to work a placer claim for ten days in the season when it can be worked is ordinarily considered as an abandonment. The regulations in the different districts are so various, however, that it is impossible to reduce them to a few classes comprehending all their provisions."

The most succinct and accurate description of the rules and regulations of the California miners, and especially of the manner of marking the boundaries of the claims, both placer and lode, is from the pen of Chief Justice Beatty (Report Public Land Commission, p. 396):

"When placer mining began in California there was no law regulating the size of claims or the manner of holding and working them, and local regulations by the miners themselves became a necessity. They were adopted, not because the subject was too complicated or difficult for general regulation, but because they were needed at once as the sole refuge from anarchy. The first and most important matter to be regulated was the size of claims, and the earliest miners' rules contained little else than a limitation of the maximum amount of mining ground that one miner might hold. That being determined, he was left to take possession of his claim and work it as he pleased. It thus appears that the location of a mining claim was nothing more nor less than the taking into actual possession of a limited quantity of mining ground, and this was accomplished by simply marking its boundaries and going to work inside of them. But in taking possession of their claims miners sometimes failed to mark their boundaries as distinct or to do as much work on them as later comers, desirous of securing claims for themselves, thought essential to an actual possession. Hence arose disputes and violent conflicts. The next and final step in the development of miners' law accordingly was the regulation of the mode of marking the boundaries or otherwise designating the locality and extent of claims and the quantum of work that must be done to hold them. As a fence around a claim was utterly useless, four stakes at the corners or two stakes at the ends of the river boundary of a placer claim were

usually allowed to be a sufficient marking of its extent; but, in this connection, a written notice, descriptive of the claim and containing the name of the owner, was sometimes required to be posted on the ground and recorded by the district recorder. Then, as it was frequently impossible to continue work upon a claim on account of scarcity or superabundance of water, and as miners were frequently driven from the vicinity of their claims by the severity of the winter season, the rules went on to prescribe the minimum number of days' work per annum by which a claim could be kept good, or the maximum of time during which the miner might absent himself from his claim without being deemed to have forfeited or abandoned it. In rare and exceptional instances miners may have attempted to extend their regulations to other matters than those mentioned, but I risk nothing in saying that the above satement embraces the essence of all the miners' law of the Pacific Coast relating to placer claims. After these regulations had been some time in force came the discovery of veins or lodes of gold bearing rock in place, and to them the law of the placers was adapted with the least possible change.

"First—The size of claims was regulated by allowing so many feet along the vein.

"Second—The mode of making out or designating the claim was prescribed; and

"Third—The amount of work necessary to hold it.

"The principal modification of the placer-mining law as adapted to lode claims was upon the second point. The placers were located as surface claims and were best marked by stakes at the corners; notice and record, when required, being deemed of minor importance. In lode claims these conditions were reversed. The exact course or strike of a lode was seldom ascertainable from the croppings at the point of discovery; and as the claim was of so much of the lode in whatever direction it might be found to run, with a strip of the adjacent surface, taken for convenience in working the lode and as a mere incident or appurtenance thereto, it was found to be impracticable to mark the claim by stakes on the surface, and hence the notice and record came to play a more important part in designating the claim. They came in fact to be all-important, locations of lode claims being commonly made by posting a notice in reasonable proximity to the point at which the lode was discovered or exposed, stating that the undersigned claimed so many feet of the vein extending so far and in such direction or directions from the discovery point, together with the amount of adjacent surface ground allowed by the rules of the district. The notice so posted had the effect under the rules of holding the ground described a certain length of time, commonly ten days, within which time it was necessary to have the notice recorded in the district records in order to keep the claim good. This was all that was required under the head of marking or designating the locality and extent of the claim, and it was thereafter held by simply doing the prescribed amount of work. This was the sum total of the California miners' law."

In view of the historical importance of the fugitive records of the local rules and regulations of the various mining districts, and as some of the provisions of many of them are, under our peculiar federal legislation, still in force, I have, at the risk of being statistical, endeavored to collate the names of the different districts and the dates of adoption of the several codes of rules and regulations, and to point out where authentic records thereof are extant. Where I have not specifically referred to the particular work from which the record is taken, it is in all cases to be found in the invaluable collection of the local rules and regulations of the miners of California contained in the official Report of the United States Census for 1880, Vol. XIV, pages 271 to 345 inclusive. The record is as follows:

EARLY MINING DISTRICTS OF CALIFORNIA.

NEVADA COUNTY—

Nevada county quartz regulations, December 20, 1852. Extend over all quartz mines and quartz mining property within the county.

Gold Mountain mining district, December 30, 1850; continued March 17, 1851; amended September 29, 1851; last amendment repealed October 5, 1851; regulations extended, September 29, 1852; regulations extended December 15, 1853.

Union Quartz Mountain mining district, February 30, 1851; amended May 24, 1851.

Kentucky Hill mining district, May 1, 1851.

Prospect Hill mining district, May 1, 1851.

Saunders Ledge mining district, June 6, 1851.

Day's Ledge mining district, October 21, 1851.

Lafayette Hill mining district, November 10, 1851.

Indian Springs Hill mining district, November 17, 1851.

Jefferson Hill No. 1 mining district, December 16, 1851.

Mary's Diggings mining district, December 31, 1851.

Rebecca's Hill mining district, Januarv 3, 1852.

Weehawken Hill mining district, June 16, 1852.

Rockwell Hill mining district, June 17, 1852.

Brooklyn Hill mining district, June 22, 1852.

Nebold Hill mining district, June 22, 1852.

Mount Olivet mining district, June 25, 1852.

Union Hill No. 2 mining district, June 25, 1852.

Buffalo Hill mining district (no date); transferred to book of Township Recorder, June 15, 1852.

Caledonia Hill mining district, June 29, 1852.

Pecker's Hill mining district, June 29, 1852.

Poppysquash Hill mining district, June 30, 1852.

Pierce's Ledge (formerly Indian Hill) mining district, July 22, 1852.

Sierra Nevada Hill mining district, August 10, 1852.

Blethen Hill mining district, August 21, 1852.

Mount Pleasant mining district, October 11, 1852.

Constitution Hill mining district, October 12, 1852. Jumped and called Iowa Hill, April 17, 1854.

Cedar Hill mining district, October 17, 1852.

Washington Hill mining district, November 15, 1852.

Boston Hill mining district, November 21, 1852.

Norton's Hill mining district, December 9, 1852.

Empire Hill No. 1 mining district, 1852.
Kosciusko Hill mining district, January 1, 1853.
Ben. Franklin Ledge mining district, January 28, 1853.
Jefferson Ledge mining district, February 25, 1853.
Pyrenees Hill mining district, September 23, 1853.
Ione Ledge mining district, August 24, 1854.
Madison Quartz Ledge and Hill mining district, August 18, 1855.
Hoosac Hill mining district, (no date).
Rhode Island Hill mining district (no date).
Sebastopool Ledge mining district (no date).
Ashville Hill mining district. Same regulations as Cedar Hill.
Oak Hill mining district. Same regulations as Cedar Hill.
Sweetland mining district, 1850; amended in 1852; divided into three districts with separate regulations (Hittell's History of California, Vol. III, page 260).

North San Juan Placer regulations, November 5, 1854. (Ross Browne's Mineral Resources of the West, 1867, page 240.)

Albion Hill, Gold Hill No. 2, Independence Ledge, Kentucky Fountain Ledge, Lewis Lead, North Point Ledge, Oro Fino Hill, Ohio Hill, Pine Hill Ledge, Quimbaugh Hill, Richmond Hill, Squirrel Creek Hill, St. Louis Ledge, Texas Ledge, and Trenton Ledge mining districts are all governed by the county laws.

TUOLUMNE COUNTY—

Jackass Gulch mining district (including Soldier Gulch), 1848; regulations put into writing in 1851. (Hittell's History of California, Vol. III, page 257; Shinn's Mining Camps, page 237.)

Jacksonville mining district, January 20, 1850. (The Public Domain, 1883, page 317; Hittell's History of California, Vol. III, page 130.)

Jamestown mining district (no date); laws repealed and new regulations adopted, 1853. (Hittell's History of California, Vol. III, page 258.)

Springfield mining district, December, 1854. (Yale's Mining Claims and Water Rights, page 84; Hittell's History of California, Vol. III, page 258; Shinn's Mining Camps, pages 238-242.)

Shaw's Flat mining district (no date). (Hittell's California, Vol. III, page 259.)

Sawmill Flat mining district (no date). (Hittell's California, Vol. III, page 259.)

Brown's Flat mining district (no date). (Hittell's California, Vol. III, page 259.)

Jackson Flat and Tuttletown mining district, November, 1855. (Yale's Mining Claims and Water Rights, page 84; Hittell's California, Vol. III, page 259; Shinn's Mining Camps, pages 240-242.)

Columbia district placer regulations. (Ross Browne's Mineral Resources of the West, 1867, page 238.)

New Kanaka Camp placer regulations. (Ross Browne's Mineral Resources of the West, 1867, page 238.)

Tuolumne county quartz regulations, in force September 1, 1858, extending over and governing all quartz mining property within the county. (Ross Browne's Mineral Resources of the West, 1867, page 237.)

MARIPOSA COUNTY—

Rules adopted at convention of quartz miners at Quartzburg, June 25, 1851.
Coulterville mining district, March 5, 1864.

AMADOR COUNTY—

Drytown mining district, June 7, 1851, consisting of all that portion of the

then county of Calaveras south of the dividing ridge between the Cosumnes river and Dry creek, and north of the Mokelumne river.

Volcano quartz mining district, February 6, 1858. J. Tullock and F. Reichling the committee that drafted the code.

"Jackson and all other Veins of Metal District," February 7, 1863; amended May 22, 1863.

Puckerville (now Plymouth) mining district, February 11, 1863. B. F. Richtmyer, secretary. E. S. Potter elected recorder; new regulations adopted at store of F. Sheaver, May 23, 1863.

Clinton mining regulations. (Ross Browne's Mineral Resources of the United States, 1868, page 73.)

Pine Grove mining regulations. (Ross Browne's Mineral Resources of the United States, 1868, page 73.)

EL DORADO COUNTY—

Grizzly Flat mining district, February 4, 1852; amended February 26, 1853; none of the books containing records made under the first laws are in existence; amended and name changed to Mount Pleasant mining district.

French Town mining district, November 12, 1854; amended January 3, 1858; amended April 6, 1859; amended March 20, 1863.

Smith's Flat mining district (no date of adoption given); amended February 20, 1855; amended February 12, 1873.

Spanish Camp quartz mining district, April, 1862; name changed to Agra district, June 14, 1866.

Diamond quartz mining district, February 14, 1863.

Placerville mining district, March 21, 1863.

El Dorado (Mud Springs) mining district, April 7, 1863.

Big Canyon quartz mining district, November 11, 1865.

Henry's Diggings mining district, June, 1867.

Kelsey mining district, regulations adopted May 7, 1873, in conformity with the Mineral Law of Congress of May 10, 1872.

Greenwood mining district (no date). No written regulations now in force.

CALAVERAS COUNTY—

Angels mining district, July 20, 1855; amended March 24, 1860. Record of district mining locations burned in 1855.

Murphy's mining district, October 26, 1857.

Lower Calaveritas mining district, November 7, 1857; amended June 28, 1858; amended April 4, 1863.

San Andreas mining district, March, 1866; amended Article XVI (no date).

Pilot Hill placer regulations. (Ross Browne's Mineral Resources of the West, 1867, page 241.)

Copper Canyon regulations, adopted August 3, 1860. (Ross Browne's Mineral Resources of the West, 1867, page 242.)

PLUMAS COUNTY—

Warren Hill mining district, October 22, 1853. Creed Haymond, secretary.

South Placer, quartz regulations. (Ross Browne's Mineral Resources of the United States, 1868, page 108.)

Canada Hill quartz regulations. (Ross Browne's Mineral Resources of the United States, 1868, page 108.)

Lone Star quartz regulations. (Ross Browne's Mineral Resources of the United States, 1868, page 108.)

SIERRA COUNTY—

Saint Louis mining district, July 6, 1856.

Gibsonville mining district, January 8, 1857.

Wet Ravine mining district (no date).

Trigaski Flat mining district. (Yale's Mining Claims and Water Rights, page 75; Prosser vs. Parks, 18 Cal., 47.)

Sierra county quartz mining district, June 6, 1859. Extends over all quartz mining claims in the county.

BUTTE COUNTY—

Rich Gulch quartz mining district, November 15, 1851; further regulations May 22, 1852.

Con Cow mining district, August 28, 1880.

Oregon Gulch mining district, December 29, 1855; placer regulations amended June 17, 1861; quartz regulations amended August 13, (no year specified); both placer and quartz regulations amended February 3, 1872.

Helltown and Centerville mining district, October 11, 1857; amended March 23, 1878.

Cherokee Flat mining district, November 19, 1861; amended September 23, 1871.

Forbestown mining district, June 9, 1863.

Lovelock mining district, April 3, 1865; amended, probably after May 10, 1872.

Greely Flat mining district, December 12, 1872.

Live Oak Flat mining district, July 5, 1872.

Megalia mining district, since May 10, 1872. Old laws of the district lost and abrogated by custom and usage of the miners.

Forks of Butte mining district, June 1, 1878.

Inskip mining district, May 17, 1879.

Bangor quartz regulations. (Ross Browne's Resources of the United States, 1868, page 162.)

Thompson's Flat mining district, 1851. The books were lost in 1857.

Bidwell's Bar mining district, 1850; reorganized 1863. Original regulations and records destroyed by fire, 1854; regulations of second organization also lost.

YUBA COUNTY—

Upper Yuba mining district, April 11, 1852.

Sucker Flat mining district, January 22, 1855; adjourned meeting January 25, 1855; amended December 31, 1855; amended February 10, 1868.

Ohio Flat mining district, March 8, 1856; laws adopted March 15, 1856; amended November 12, 1857. By-laws adopted May 15, 1858.

Odd Fellows mining district. On account of record book containing laws having been destroyed, new regulations adopted September 24, 1864.

Indiana Ranch quartz mining district, April 18, 1857; amended November 7, 1857; amended March 13, 1864; amended April 25, 1878.

Brownsville mining district, April 7, 1860; amended April 7, 1862.

Empire mining district, January 22, 1863.

Dobbin's Creek mining district, March 26, 1864; approved April 17, 1864.

Oregon Hill mining district (no date). First recording February 17, 1864.

Brown's Valley mining district, February 14, 1852; repealed and new regulations adopted February 14, 1853; amended July 31, 1853; amended August 8, 1853; amended January 4, 1864; amended January 2, 1865; amended January 8, 1866; amended January 7, 1867. (Ross Browne's Mineral Resources of the United States, 1868, pages 155-156; Shinn's Mining Camps, page 249). Reorganized, May 3, 1870. (Tenth Census of the United States, 1880, Vol. XIV, page 319.)

TRINITY COUNTY—

East Fork of North Trinity mining district, February 17, 1852.

Weaver Creek mining district, June 19, 1852.

Weaverville mining district, June 7, 1853.

Democrat Gulch mining district, September 3, 1856.

SISKIYOU COUNTY—

Lower Humbug Creek mining district, April 7, 1855.
Oro Fino Diggings mining district, February 6, 1856.
Little Humbug Creek mining district, April 8, 1856.
Maine Little Humbug Creek mining district, October 8, 1856.
Hungry Creek Diggings mining district, October 24, 1857; amended January 27, 1858.
Empire mining district, February 15, 1864.

PLACER COUNTY—

Illinoistown mining district, March 21, 1863; amended Section 4 (no date).
Dutch Flat mining district (no records to be found).
Auburn mining district (no date). The old mining laws are lost or destroyed.
Yankee Jim's mining district. Copies of the old mining laws are still in existence.
Bath mining district (no date). The old mining laws are not to be found.
Forest Hill mining district (no date). "The district is bounded on the north by Shirt-Tail canyon, etc." The mining laws have been burned.
Iowa Hill mining district (no date). The mining laws have not been in use, nor has organization been kept up since about 1865.

SACRAMENTO COUNTY—

Folsom quartz mining district, January 22, 1857. Adopted at the house of Colonel Russ on Prospect Hill, in the town of Russville (Ashland), and "extend over all quartz mines and quartz mining property within the county of Sacramento."

MONO COUNTY—

Bodie mining district, July 10, 1860; amended at the Taylor cabin, August 10, 1861; amended at Burnett's cabin June 7, 1862; amended at Leach and Monroe's cabin June 9, 1862; amended November 12, 1862; amended at the house of J. Elnathan Smith, Jr., March 4, 1864; amended at the house of Biderman and Pooler, October 24, 1864, six members present; amended at Wand & Barker's saloon, October 5, 1865, one article being adopted by a vote of five to four; amended at house of E. D. Barker, March 3, 1866; amended at house of Robert Kernahan, March 4, 1867; amended at house of F. Swenson, November 13, 1867; amended in saloon of J. C. Smith, at 7 P. M., December 30, 1876.
Blind Springs mining district, March 23, 1865; amended May 4, 1865; amended July 8, 1865; amended November 18, 1865; amended November 25, 1865; amended March 20, 1875; amended March 27, 1875.
Homer mining district, October 9, 1879; "adopted United States mining law of March 10, 1872."

CONTRA COSTA COUNTY—

Marsh Creek mining district, May 27, 1865.

SAN BERNARDINO COUNTY—

Borax Lake mining district, April 28, 1873.
Brier mining district, May 3, 1873.
Cajon mining district, March 19, 1874.
Upper Yreka Creek mining district (no date).

Some of the provisions of these rules and regulations, outside of the general provisions already referred to, are interesting and instructive.

SOME CHARACTERISTIC PROVISIONS.

In the Helltown District, in Butte County, for instance, all kinds of placer

mining existed, and the rules and regulations, among other things, define and prescribe as follows:

"First—Claims shall consist of four classes: (1) River claims. (2) Bar, bench or flat claims. (3) Ravine claims. (4) Hill claims.

"Second—River claims shall be all that is drained, except such parts of the ground as may be claimed previous to giving notice of intention to drain such ground.

"Third—Bar, bench or flat claims shall be one hundred feet, facing the river, and shall extend at right angles across such bar, bench or flat, across the supposed channel to the final raise of the bed-rock.

"Fourth—Ravine claims shall extend one hundred and fifty feet up or down the ravine, and not exceed forty feet in width, and may be located in the center or on either side.

"Fifth—Hill, deep or coyote diggings shall consist of one hundred feet to the man, running crosswise of the hill, through it, or to unlimited extent.

"Sixth—Claims or river bars, benches or flats that may be worked by the water from the river or creek shall be considered as wet diggings, and ravines that are dependent on the rainy season for water shall be considered as dry diggings.

"Seventh—Any one holding a claim or claims shall work the same when workable as often as one day in each week, to have them represented by another, or forfeit his right to them unless prevented by sickness."

The following taken from the regulations of Little Humbug Creek Mining District, in Siskiyou County, throws a human side-light on life in the early mining camps:

"Art. VII—Resolved, That no person's claim shall be jumpable on Little Humbug while he is sick or in any other way disabled from labor, or while he is absent from his claim *attending upon sick friends.*"

The ease with which rules and regulations could be repealed or amended is illustrated in the following:

"Sec. VIII—The laws may be altered or amended at any meeting by a majority present, providing there shall have been notice of such an alteration or amendment given in the notice of the meeting calling it."—*Regulations of Ohio Flat District, Yuba County.*

"Article XII—Any person at any time feeling aggrieved by any of the above Rules and Regulations and desirous to have said Rules and Regulations altered or amended, may call a meeting of the miners by giving at least three days' notice of such intention by placing up at least two notices on the most public places in Gibsonville."—*Regulations, Gibsonville District, Sierra County.*

"Article XII—No amendments or alteration shall be made to these laws unless a meeting of the miners of this district be called by notice posted in three public places within this district, at least before such meeting takes place five days."—*El Dorado (Mud Springs) District, El Dorado County.*

One of the gems in the collection is to be found among the regulations of the Mariposa District, in 1851:

"Resolved, That we consider all rights claimed in quartz veins, subject to the debts of the claimants or owners, as absolutely as may be other property.

"Resolved, . . . That a copy be furnished to our Senators and Representatives in Congress.

"Resolved, That for the full and faithful maintenance of these Rules and Regulations in our county of Mariposa we sacredly pledge our honors and our lives."

The humor of the last resolution consists not so much in the bombastic yet earnest imitation of the Declaration of Independence as in the stern sincerity of the omitted word. The only reason they did not pledge their *fortunes* was because they did not have any! Fortunes were what they were hunting.

In some districts the penal regulations were no less explicit than those for the location, holding and working of claims:

> "Article XII—Any person who shall steal a mule, or other animal of draught or burden, or shall enter a tent or dwelling and steal therefrom gold-dust, money, provisions, goods, or other articles amounting in value to one hundred dollars or over, shall, on conviction thereof, be considered guilty of felony, and suffer death by hanging.
>
> "Article XIII—Should any person wilfully, maliciously and premeditatedly take the life of another, on conviction of murder, he shall suffer death by hanging.
>
> "Article XIV—Any person convicted of stealing tools, clothing or other articles, of less value than one hundred dollars, shall be punished and disgraced by having his head and eyebrows close shaved and shall leave the encampment within twenty-four hours."—*Jacksonville District*, 1850, *Tuolumne County*.

One of the most instructive records of miners' meetings is that of the meeting held Dec. 13, 1853, in the Weaverville District, in Trinity County:

> "Dr. Ware explained the object of the meeting in a few pertinent remarks. He said that McDermot told him on yesterday that unless he gave up one-half of the water in the creek aforesaid, that he, McDermot, would take a body of men and take the water by force of arms and hold the same until he and his men were whipped off the ground. His party as above mentioned have taken possession of the water, and are holding it by force of arms. In this dilemma Dr. Ware calls upon his fellow-miners to assist him in defending his rights, agreeable to the old miners' laws. They said that this was a serious affair, but they were willing to defend the old and established miners' laws and the right."

A committee of five was appointed to investigate the nature of the grievance and examine the law on the subject, and a recess taken. The minutes then proceed:

> "Pursuant to adjournment meeting met at 1 o'clock, were called to order by the chairman, Mr. Cameron. Committee reported as follows, having thoroughly investigated the laws and customs of the miners of Weaver: We fully concur in the opinion that Dr. Ware is fully entitled to all the water in West Weaver, except four inch-heads, which is allowed for the bed of the stream; also that the burning of his reservoir, and the destruction of his dam and other property and the taking of his water from his race by force of arms are malicious acts, and should not be submitted to by those who are in favor of law and order.
>
> "On motion, the report was received and the committee discharged.
>
> "On motion, it was 'Resolved, That we assist Dr. Ware in turning the water into his race and that we sustain him to the last extremity in keeping it in the race.
>
> "On motion, the meeting then adjourned *for the purpose of carrying this resolution into effect.*"

At this interesting point the minutes end, and the reader is left to imagine what usually takes place when an irresistible force meets an immovable object.

As a sample of regulations concerning the location of quartz claims, that adopted for all the quartz mines in Nevada County, Dec. 20, 1852, will suffice:

"Article II—Each proprietor of a quartz claim shall hereafter be entitled to one hundred feet on a quartz ledge or vein; and the discoverer shall be allowed one hundred feet additional. Each claim shall include all the dips, angles and variations of the vein."

In other counties the length of a claim was usually greater than in Nevada, but the dips, spurs, angles and variations always went with the ledge, and if not expressly set forth in the rules and regulations were always included in the "customs" of the district. This was also true of the use of sufficient surface ground for the convenient working of the claim.

THE DOCTRINE OF "CUSTOMS."

This doctrine of "customs," in its technical sense, as applied to early California mining operations, must not be confused with the written "rules and regulations" of miners. Though very serviceable to the early miner for obvious reasons, its possible and actual misuse at a later day often came back to plague him. "These (customs)," says Mr. Yale, "grow up by self-creation, and are not the subjects of invention or provision. They may be superseded when once observed as obligatory, and the customs of one district may have controling force in another. They are not the ancient customs of the common law, which, to have force, must be immemorial, merely traditional, and not originating within living memory. But they are the usages which grow out of the regulations by practice, are appurtenant to them, and must be regarded and enforced as an inherent part of them, as explaining, enlarging and defining them. Their force is greater because they are within living memory, and as no generation has elapsed since they have existed, are as ancient as circumstances will conveniently admit." Their growth in a community where pen, pencil and paper were not exactly implements of mining, where everyone knew his neighbor, and where everyone knew what transpired in camp each day, was perfectly natural; and their recognition by courts into whose presence the rules and regulations of the miners themselves came in the guise of custom, in the generic sense of the word, was equally natural.

STATE LEGISLATIVE RECOGNITION.

In 1851 Stephen J. Field, then a member of the Assembly from Yuba County, introduced into the legislature and had passed what is commonly known as the Practice Act, section 621 of which (since re-enacted as section 748 of the Code of Civil Procedure) was as follows: "In actions respecting mining claims, proof shall be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claims; and such customs, uses or regulations, when not in conflict with the constitution and laws of this State, shall govern the decision of the action." This was the first statute to take notice of these customs, usages and regulations, and its enactment recognized and, in a sense, adopted them as the common law of mines and mining in California.

The act of April 13, 1860, relating to the conveyance of mining claims,

also expressly recognizes the "lawful local rules, regulations or customs of the mines in the several mining districts in this State." This is the only other statutory recognition of these rules and customs in California before the federal mining law of 1866.

"These usages and customs," said Chief Justice Sanderson, in 1864, in construing Section 621 of the Practice Act, in the case of Morton vs. Solambo Copper Mining Co., "were the fruit of the times, and demanded by the necessities of communities who, though living under common law, could find therein no clear and well-defined rules for their guidance applicable to the new conditions by which they were surrounded, but were forced to depend upon remote analogies of doubtful application and unsatisfactory results. Having received the sanction of the legislature, they have become as much a part of the law of the land as the common law itself, which was not adopted in a more solemn form."

STATE SUPREME COURT RECOGNITION AND CONSTRUCTION.

The State courts gave full recognition to the rules, regulations and customs of miners, and a large body of our law is made up of the judicial interpretation and application of these rules and customs, a summary of the chief points of which will not be amiss. The elastic construction given to these rules and regulations and the sympathetic construction given to the customs and usages were in accord with the spirit of their creation, and effectively promoted justice in the Arcadian days; but some of the principles then laid down became in later days, under other circumstances, a very Pandora's box of troubles.

To have the force of law, a regulation must be in force at the time of the location. It does not, like a statute, acquire validity by the mere enactment, but from the customary obedience and acquiescence of miners following its enactment. It likewise becomes void by disuse; this disuse, however, must be general; it is not sufficient that the rule has been disregarded or violated by a few persons. Whether it has fallen into disuse is a question of fact, and, therefore, must go to the jury.

Where a regulation has fallen into disuse, a custom reasonable in itself and generally observed, though contrary to the regulation, may be proved. But the written rules are presumed to be in force, and proof of a contrary custom must be clear. The existence of mining regulations is a fact, and must be proved as a fact. Judicial notice will not be taken of them. Upon the person relying on them lies the burden of proving them. This is done by producing the original rules when in writing. When it is proved that the rules were adopted and recognized, they become admissible in evidence. The fact that the meeting at which they were adopted was held upon a day different from that named in the notice thereof, does not, in the absence of fraud, render them inadmissible. And an alteration in one article of the regulations after their adoption does not change the legal effect of the other articles.

When the written regulations are deposited with some authorized officer,

or recorded in his office, they may not be proved by parol evidence. Other evidence, however, besides proof of the written record or of the acts of a miners' meeting is admissible as tending to prove the existence of a particular rule. This may be done by establishing a custom or usage in the district. The custom of recording claims in a district, while not proving absolutely the existence of a rule requiring such a record, tends to establish it. So on a subject as to which the written rules, when proven, are silent, a custom prevailing in the district may be proved; but regulations or customs of another district are not admissible to vary such a custom or the written rules.

The admissibility of mining regulations is not affected by the shortness of the time that they have been in force. The common law rule as to customs has no application on this point. A single extract from the written rules of a district may not be proved; the whole body of rules of a district must be offered in evidence.

When regulations have been proved, their construction, like that of other writings, is for the court. But where good faith is shown, a substantial compliance with them is sufficient. There is a distinction between the local rule made by a few miners within a district and a mining regulation enacted by the whole district, or a custom in universal force throughout the district. The former is not binding upon the locator, unless he had actual notice of its existence or assisted in its enactment.

Barringer and Adams on Mines, pp. 281-190, 290.

In an action for possession of a mining claim, where plaintiff relied upon a location under certain written rules adopted by the miners of the district, which contained no requirements that notices should be posted on the claims at the time of the location, defendant may prove a custom in the district requiring such posting of notices. No distinction is made by the statute (Practice Act, sec. 621) between the effect of a "custom" or "usage," the proof of which must rest in parol, or a "regulation," which may be adopted at a miners' meeting and embodied in a written local law. The custom or regulation must not only be established, but must be in force. A custom reasonable in itself and generally observed will prevail as against a written mining law which has fallen into disuse. *Whether the law is in force at any given time is for the jury.*

Harvey vs. Ryan, 42 Cal. 626.

FEDERAL SUPREME COURT RECOGNITION.

The Supreme Court of the United States gave full recognition to the binding force of the local rules, regulations, usages and customs before the sanction of federal statutory enactment, and to the doctrine that they constitute the American common law of mines.

Sparrow vs. Strong, 3 Wall. 97, decided in 1865.

Jennison vs. Kirk, 98 U. S. 453, decided in 1878.

EFFECT OF UNCERTAINTY OF TENURE.

The rules, regulations and customs of the miners were the work of men who were prospectors, and were admirably adapted for the mining operations that called them into being. Each man and his partner or partners worked their own claim. When the early placers were worked out, however, and the development of the mining industry demanded not so much accessibility to the public domain as capital for the successful exploitation of quartz mines, security of title and a declaration of federal policy with reference to the public mineral lands became paramount. The uncertain character of the tenure of the land, too, reacted upon the mining population, made their future uncertain and shifty, and prevented the home-building so essential to the settling up and development of the mining sections of the State. "Their enterprises," says Ross Browne, "generally were undertaken for the purpose of making the most profit in a brief time. There was no proper care for a distant future; and without such care no society is sound, no State truly prosperous. If a claim could, by hastily washing, be made to pay $10 per day to the hand for three months, or $6 for three years by careful washing, the hasty washing was preferred. If a fertile valley that would have yielded a revenue of $5 per acre for century after century to a farmer could be made to yield $5 per day to a miner for one summer, its loam was washed away, and a useless and ugly bed of gravel left in its place. The flumes, the ditches, the dwellings, the roads, and the towns were constructed with almost exclusive regard to immediate wants. * * * The claims were made small, so that everybody should have a chance to get one; but the pay-dirt was soon exhausted, and then there must be a move. In such a state of affairs miners generally could not send for their families or make elegant homes. Living alone and lacking the influences and amusements of home-life, they became wasteful and wild. Possessing no title to the land, they did nothing to give it value, and were ready to abandon it at any moment. The farmers, merchants, and other fixed residents of the mining counties were agitated and frightened nearly every year by the danger of migration of the miners to some distant place. One year it is Peru; another it is British Columbia, Idaho, Reese River, Pahranagat or Arizona; and it may next be Brazil, Liberia, or Central Africa, for all we know."

EXECUTIVE RECOMMENDATIONS FOR CONGRESSIONAL ACTION.

Meanwhile congress steadily pursued its policy of "generous inaction." The great battle of whether California should be admitted as a slave or a free state had to be fought out, and all things else had to wait. It took longer to admit California into the Union than to fight the Mexican War. The executive branches of the government, however, never lost sight of the necessity of some definite federal legislative action.

On December 4, 1849, President Taylor, in his inaugural message, after

stating that he thought the establishment of a branch mint in California would afford facilities to those engaged in mining "as well as to the government in the disposition of the mineral lands," says:

"In order that the situation and character of the principal mineral deposits in California may be ascertained, I recommend that a geological and mineralogical exploration be connected with the linear surveys, and that the mineral lands be divided into small lots suitable for mining, and be disposed of, by sale or lease, so as to give our citizens an opportunity of procuring a permanent right of property in the soil. This would seem to be as important to the success of mining as of agricultural pursuits."

These recommendations, so simple and so just, were, however, not the burden of the official report of Mr. Ewing, the Secretary of the Interior, who had evidently had some smattering of the Spanish code of mining, and according to whom the division, disposition and management of the mines would require much detail. It was due to the nation, he claimed, that this rich deposit of mineral wealth should be made so productive, as, in time, to pay the expense of its acquisition. He advocated the expediency of the government furnishing scientific aid and directions to the lessees and purchasers of the mines and establishing a mint in the mines, so that the gold collected could be delivered into the custody of an officer of the mint, and out of the amount so collected and deposited a percentage could be deducted, and the balance paid to the miner in coin, stamped bullion, or in drafts on the treasury, at his option. "The gold in the mine, after it is gathered, until brought into the mint, should be and remain the property of the United States."

Senator Fremont, five days after the admission of California into the Union, introduced the first federal mining bill concerning the public lands of the new acquisition. The bill was a complicated one, and, in principle, contemplated the granting of permits, by agents appointed by the government, to work mines of limited and specified quantities, upon the payment of a stipulated sum. The bill passed the Senate, but failed of passage in the House. Senator Felch, chairman of the committee on public lands, in the course of the debate on the Fremont bill, offered a substitute which championed the principles of free mining, but it was defeated in the Senate. Both in the permit to be obtained under the Fremont bill, and in the land to be acquired under the Felch bill, a placer was limited to thirty feet square, and a mine to two hundred and ten feet square, the lines to be cardinal points.

President Taylor died in the fall of 1850, and on December 2, 1850, President Fillmore, in his message to Congress, said: "I also beg leave to call your attention to the propriety of extending at an early day our system of land laws, with such modifications as may be necessary, over the State of California and the territories of Utah and New Mexico. The mineral lands of California will, of course, form an exception to any general system which may be adopted. Various methods of disposing of them have been suggested. I was at first

inclined to favor the system of leasing, as it seemed to promise the largest revenue to the government, and to afford the best security against monopolies; but further reflection and our experience in leasing the lead mines and selling lands upon credit, have brought my mind to the conclusion that there would be great difficulty in collecting the rents, and that the relation of debtor and creditor between the citizens and the government would be attended with many mischievous consequences. I therefore recommend that instead of retaining the mineral lands under the permanent control of the government, they be divided into small parcels and sold, under such restrictions as to quantity and time as will insure the best price and guard most effectually against combinations of capitalists to obtain monopolies."

The first glimmer of congressional action with reference to the mineral lands in California was by the Act of March 3, 1853, "for the survey of public lands in California, the granting of pre-emption rights therein, and for other purposes," directing that "none other than township lines shall be surveyed where the lands are mineral or are deemed unfit for cultivation," excluding in express terms "mineral lands" from the pre-emption act of 4th September, 1841, and further interdicting "any person" from obtaining "the benefits of this act by a settlement or location on mineral lands."

The Secretary of the Interior, Caleb B. Smith, in his annual report for 1861 (The Public Domain, page 318), called the attention of Congress to the subject in the following words:

"The valuable and extensive mineral lands owned by the government in California and New Mexico have hitherto produced no revenue. All who chose to do so have been permitetd to work them without limitation. It is believed that no other government owning valuable mineral lands has ever refused to avail itself of the opportunity of deriving a revenue from the privilege of mining such lands. They are the property of the whole people, and it would be obviously just and proper to require those who reap the advantages of mining them to pay a reasonable amount as a consideration of the advantages enjoyed."

The Commissioner of the General Land Office, in his annual report of 1862 (The Public Domain, page 318), after a review of the area of the precious metal bearing territory and the yield from the mines, gave the following opinion:

"An immense revenue may readily be obatined by subjecting the public mines either to lease under quarterly payments or quarterly tax as seniorage upon the actual product, under a well-regulated and efficient system, which would stimulate the energies of miners and capitalists by securing to such classes an undisputed interest in localities so specified, and, when the conditions as to payment for the usufruct are complied with, for unlimited periods, and while effecting this beneficial results to them would relieve the necessities of the Republic."

In 1863, the Commissioner of the General Land Office, again called attention to the mineral lands (The Public Domain, pages 318-319), recommending legislation for—"opening the mines and minerals of the public domain, the property of the nation, to the occupancy of all loyal citizens, subject, as far as compatible with moderate seigniorage, to existing customs and usages, conceding to the discoverer for a small sum a right to one mine, placer or lead (quartz), with a pre-emptive right in the same district to an additional claim, both to be held for the term of one year, for testing the value." Collectors of internal revenue were to be the collectors of the royalty.

In his message of December 6, 1864, President Lincoln called the attention of Congress to the mineral lands:

"As intimately connected with and promotive of this material growth of the nation, I ask the attention of Congress to the valuable information and important recommendations relating to the public lands . . . and mineral discoveries contained in the report of the Secretary of the Interior, which is herewith transmitted."

The Commissioner of the General Land Office, in his report for 1865, after referring to the fact that the organization of a bureau of mining was recommended in his last annual report, and stating that there can be no sufficient reason for withholding these mineral lands from the market (The Public Domain, in 1883, page 319), says:

"Congress has not legislated with a view to securing an income from the product of the precious metals from the public domain. It is estimated that two or three hundred thousand able-bodied men are engaged in such mining operations on the public lands, without authority of law, who pay nothing to the government for the privilege, or for permanent possession of property worth, in many instances, millions to the claimants.

"The existing financial condition of the nation obviously requires that all our national resources and the product of every industrial pursuit, should contribute to the payment of the public debt. The wisdom of Congress must decide whether the public interest would be better promoted by a sale in fee of these mineral lands, or by raising a revenue from their annual product."

In the annual report of the Secretary of the Treasury for the year 1865, the substitution of an absolute title in fee for the indefinite possessory rights or claims under which the mines were held by private parties was earnestly recommended:

"The attention of Congress is again called to the importance of early and definite action upon the subject of our mineral lands, in which subject are involved questions not only of revenue, but social questions of a most interesting character. Copartnership relations between the government and the miners will hardly be proposed, and a system of leasehold, (if it were within the constitutional authority of Congress to adopt it, and if it were consistent with the character and genius of our people,) after the lessons which have been taught

of its practical results in the lead and copper districts, cannot of course be recommended.

"After giving the subject as much examination as the constant pressure of official duties would permit, the Secretary has come to the conclusion that the best policy to be pursued with regard to these lands is the one which shall substitute an absolute title in fee for the indefinite possessory rights or claims now asserted by miners. The right to obtain 'a fee simple to the soil' would invite to the mineral districts men of character and enterprise; by creating homes (which will not be found where title to property cannot be secured), it would give permanency to the settlements, and, by the stimulus which ownership always produces, it would result in a thorough and regular development of the mines.

"A bill for the subdivision and sale of the gold and silver lands of the United States was under consideration by the last Congress, to which attention is respectfully called. If the enactment of this bill should not be deemed expedient, and no satisfactory substitute can be reported for the sale of these lands to the highest bidder, on account of the possessory claims of miners, it will then be important that the policy of extending the principle of pre-emption to the mineral districts be considered. It is not material, perhaps, how the end shall be attained, but there can be no question that it is of the highest importance in a financial and social point of view, that ownership of these lands, in limited quanties to each purchaser, should be within the reach of the people of the United States, who may desire to explore and develop them."

FIRST FEDERAL LEGISLATIVE RECOGNITION.

No action by Congress even indirectly recognized the conditions under which the miners had taken possession of the mines until that Act of February 27, 1865, providing for a District and Circuit Court for the district of Nevada, the ninth section of which provides as follows:

"No possessory action between individuals in any of the courts for the recovery of a mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land on which such mines lie is in the United States, but each case shall be adjudged by the law of possession."

The only other two instances before the general law of 1866, where Congress recognized possessory rights or rules of miners, or granted a fee in mineral lands, were local in their character and application; one was section 2 of the Act of May 5, 1866, (14 U. S. Stat. at Large, 43), concerning boundaries of the State of Nevada; and the other was the Act of July 25, 1866, (14 U. S. Stat. at Large, 242), commonly known as the Sutro Tunnel Act.

INTRODUCTION OF LODE LAW OF 1866.

On May 28, 1866, Senator Conness, chairman of the committee on mines and mining in the United States Senate, reported back to that body Senate

bill No. 257, entitled "An Act to regulate the occupation of mineral lands, and to extend the right of pre-emption thereto," and recommended the passage of a substitute. In his report, he took strong grounds against all measures for the sale of the mines to the highest bidders and for the taxation of those engaged in working them. He claimed that it was the first duty of Congress to set at rest all doubts and apprehensions affecting mining property by the promulgation of a policy which should give full and complete protection to all existing possessory rights upon liberal conditions, with full and complete legal guarantees, and which should provide the most generous conditions looking toward further explorations and developments. He especially commends the features of the bill recognizing the rules and regulations of the miners:

"Another feature of the bill recommended," says the report, "is, that it adopts the rules and regulations of the miners in the mining districts where the same are not in conflict with the laws of the United States. This renders secure all existing rights of property, and will prove at once a just and popular feature of the new policy. Those 'rules and regulations' are well understood, and form the basis of the present admirable system in the mining regions; arising out of necessity, they became the means adopted by the people themselves for establishing just protection to all.

"In the absence of legislation and statute law, the local courts, beginning with California, recognize those 'rules and regulations,' the central idea of which was priority of possession, and have given to the country rules of decision, so equitable as to be commanding in their national justice, and to have secured universal approbation. The California reports will compare favorably, in this respect, with history of jurisprudence in any part of the world. Thus the miners' 'rules and regulations' are not only well understood, but have been construed and adjudicated for now nearly a quarter of a century. It will be readily seen how essential it is that this great system, established by the people in their primary capacities, and evidencing by the highest possible testimony, the peculiar genius of the American people for founding empire and establishing order, shall be preserved and affirmed. Popular sovereignty is here displayed in one of its grandest aspects and simply invites us not to destroy, but to put upon it the stamp of national power and unquestioned authority."

LEGISLATIVE HISTORY OF THE BILL.

The legislative history of the passage of this bill, which, after certain amendments went upon the statute-book as the general lode mining law of July 26, 1866, under a very anomalous title, is the history of a battle royal in the favor of the lasting interests of the Western gold-producing regions. I have taken the account of it from Yale's valuable work on "Mining Claims and Water Rights," pages 10 to 12, but have not had the opportunity to verify from the original official records the account there given.

"The miners of California," says Mr. Yale, writing in 1867, "and the

States and Territories adjacent thereto, have but a very inadequate idea of the imminent peril in which the pursuit in which they are engaged was placed at the commencement of the Thirty-ninth Congress. Two years ago there was a strong disposition in Congress and the East, generally, to make such a disposition of the mines as would pay the national debt. The idea of relieving the nation of the payment of the enormous taxes which the war has saddled upon us by the sale of the mines in the far distant Pacific Slope, about which few people here have any knowledge whatever, was the most popular that was perhaps ever started—compelling other people to liquidate our obligations, has been in all ages and in all nations a highly comfortable and popular proceeding. There were some at the time of which I write who would not be satisfied with the sale of the mines. They held that even after the sale the government should be made a sharer in the proceeds realized from them. The first bill on the subject was introduced in the Senate by Mr. Sherman, of Ohio, and in the House by Mr. Julian, of Indiana. Both of these bills contained the most odious features. Sherman's bill went to the committee on public lands, of which Mr. Stewart was a member. After much consideration, it was understood that the committee would report adversely. Julian's bill received a much more favorable consideration in the House. In fact, the House went so far as to pass a resolution endorsing legislation substantially of the character contemplated in Julian's bill. After much canvassing, Mr. Conness and Mr. Stewart came to the conclusion that it was no longer safe to act on the defensive, and that it was necessary to determine what legislation would be acceptable, and to make a bold move to obtain it. The Secretary of the Treasury was then one of the strongest advocates of the sale of the mines, and appeared to be under the impression that it would yield a large revenue. The movement thus far had been encouraged by him, and it was thought that a partial success of his views would be more satisfactory to him than an entire defeat. Mr. Conness accordingly suggested to him to have a bill prepared in his department, which would avoid the odious provisions of the other two propositions, and get some Senator to introduce it, assuring him that a liberal measure would receive the favorable consideration of the Pacific delegation. The result was that the secretary had prepared the second bill, introduced by Mr. Sherman, which was a great gain on the first bill. This bill went to the committee on mines, of which Mr. Conness was chairman and Mr. Stewart a member. After much discussion, these two Senators were appointed a committee to draft a substitute, which, after several weeks of close study, resulted in the reporting of a bill substantially the same as the one which is now the law. At this time it was not expected that it would be possible to do more than to get a report of the committee in favor of the measure. which it was thought would be an advanced affirmative position, from which the granting, selling or other calamitous disposition of the mines could be successfully withstood. Upon making the report, however, it was determined to put on the boldest front possible, and try and pass it through

the Senate. It came up on the 18th day of June, 1866, and at first had but two warm advocates—its authors. The discussion occupied the entire day, Mr. Stewart supporting the bill. Mr. McDougall first favored the bill, and then made a speech against it. Mr. Williams, of Oregon, was opposed to all bills of the kind. Nesmith contented himself with voting against it. Nye opposed it, and said it would be good policy to let the whole subject alone, and not legislate upon it at all. This speech left his real position somewhat indefinite. In the course of the debate, however, it became manifest from the remarks of Senators Sherman, Buckalew and Hendricks, that the real merits of the bill were beginning to be appreciated by the Senate. The two authors of the bill congratulated themselves on this sign of progress, and resolved to try again. It was called up again on the 28th by Mr. Stewart, and was debated by Senators Stewart, Conness, Sherman, Hendricks and others. After being amended slightly by Mr. Stewart, the bill passed the Senate. When it was first introduced, the bill had no friends in the House, but after it passed the Senate some of the Pacific delegation began to regard it favorably. It should have gone in the House to the committee on mines, of which Mr. Higby was chairman; but Mr. Julian, who is an old member, and was then chairman of the committee on public lands, seized on the bill at once, and had it transferred to his committee. Then the struggle came to get it out of that committee. Mr. Stewart addressed himself to the members of it, and got every one of them but Julian, but he was intractable. He wanted his bill to go first, and would not let this supersede it. The House, too, was canvassed, and was found to be favorably disposed, but there was no way of getting at the bill. In the meantime, Higby had passed a bill from the committee on mines in regard to ditches. It contained only three provisions, and bore no resemblance to the bill in question, but it related to the same subject. When this bill came into the Senate, the mining bill was tacked on as a substitute, and was passed. It was then sent back to the House, and went on the Speaker's table. In that condition it required a majority to refer it. To get this majority, Julian exerted all his strength, but failed. The bill was passed in the House without amendment, and became a law. This accounts for its being entitled 'An Act granting the right of way to ditch and canal-owners through the public lands, and for other purposes.' I had been particular about hunting up all the facts bearing upon this struggle, for the reason that the bill evolved from it is the most important, so far as California is concerned, that has ever been passed by Congress. . . . The result of the whole fight is the grant of all the mines to the miners, with some wholesome regulations as to the manner of holding and working them, which are not in conflict with the existing mining laws, but simply give uniformity and consistency to the whole system. The escape from entire confiscation was much more narrow than the good people of California ever supposed. If either of the bills originally introduced had been passed, the Pacific States and Territories would have received a blow from which they would never have recov-

ered. The government could only have receded after the most irreparable and widespread damage had been done."

The passage of this law was heralded by the press of the whole Pacific slope as the greatest legislative boon conferred upon it by congress since the admission of California into the Union. The passage of the bill certainly marked an epoch in the history of the State. Probably the most just and sensible comment upon it is that of the San Francisco *Bulletin* in its issue of July 31st:

"No measure of equal consequence to the material and, we may add, to the moral interests of the Pacific states, was ever before passed by congress. * * * The passage of the bill, whatever defects it may develop when more critically examined and enforced, marks a change in the public land policy, equal in importance to the adoption of the pre-emption and homestead system; indeed, its practical effect will be to extend the now unquestionable benefits of that system to the vast field of the mineral regions which have hitherto been largely excluded from those benefits. * * * It was one of the greatest evils of the negative policy of congress regarding the mineral lands that, while it prevented our own people from acquiring titles to them, it opened their treasures freely to the transient adventurers from abroad, who only came to take them away without leaving any equivalent. As a measure calculated to give homogeneity and fixedness to our population, security to titles, and encouragement to capital and labor, the new mining law is full of promise. We believe it will have the effect also to stimulate exploration and production in the mining districts. Its good features are apparent; its bad ones will appear in time and can be easily remedied."

LODE LAW OF 1866.

The most salient features of the Lode Law of 1866 are contained in its first two sections:

> "Sec. 1. That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intentions to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.
>
> "Sec. 2. That whenever any person, or association of persons claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners, in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

The remaining sections, for the most part, prescribe methods for giving effect to the above, and in Section 4 it is provided that "the surveyor-general may, in extending the surveys, vary the same from rectangular form to suit the circumstances of the country and the local rules, laws and customs of miners; provided, that no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with right to follow such vein to any depth, with its dips, variations and angles, together with a reasonable quantity of surface for the convenient working of the same, as fixed by the local rules; and provided, further, that no person may make more than one location on the same lode, and no more than three thousand feet shall be taken in any one claim by any association of persons."

This law of 1866 was more important as marking an era in the land policy of the government than as an effective means of settling mining titles. In fact, we are sometimes tempted to believe that was the only good that came of it. It banished forever the specters of governmental licenses, leases, taxes on industry, royalties, and confiscation. The miner drew a long breath. Where before he had been legally a trespasser he was now free to explore and occupy the public domain and had a free right to mine. All the rights which he had acquired under his system of local rules, regulations and customs were explicitly recognized as property, as the possessory right to mine, and were confirmed to him. The local rules, regulations and customs which limited, defined and accompanied all the rights he claimed were adopted. And he could, whenever he desired, transform this possessory right to mine (except as to placers) into a perpetual estate in the mineral lodes themselves, together with sufficient land, for the convenient working thereof.

The method provided for obtaining a patent was simple enough. No provision, however, was made as to how a mining claim should be located, no uniform rule established as to what work should be done to hold possession of a claim. Those matters, as well as the amount of surface ground, were to be fixed by the local rules and customs. The extra-lateral right was given without mention of top of apex of the vein or lode. No mention was made of end lines. Were any needed, and, if so, how must they be drawn? Was there any relation between the surface granted for working and the boundaries of the lode? If patent could issue for only one lode, what comprised the lode? Ignorance of geology sometimes on the part of the land department, sometimes on the part of the judiciary, and sometimes on the part of the miner, had more to do with the confusion that came of the law of 1866 than perhaps any other cause.

ONE-LODE AND MANY-LODE THEORIES.

What is the lode? The fights between the champions of the one-lode theory and the many-lode theory, both before and after the passage of the act of 1866, have caused the expenditure of millions of dollars in the most

vexatious litigation. The incorporation of that one word "lode" into the statute of 1866 brought with all the undetermined controversies concerning it. One of the main sources of the lawsuits was the doubt whether the Comstock lode had at its side a number of branches, or whether it was one of a series of independent and parallel lodes within a distance of two hundred yards. The one-lode theory finally prevailed. The definition of a lode given in the Eureka-Richmond case (4 Sawy. 302), a case involving the construction of rights accruing under the law of 1866, is as follows: "We are of the opinion that the term [lode] as used in the acts of congress is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. It includes * * * all deposits of mineral matter found through a mineralized zone, or belt, coming from the same source, impressed with the same forms, and appearing to have been created by the same process." When the width of the Mother Lode of California varies from that of a knife-blade to eight hundred feet, and more, we realize what kind of an inconstant variable instead of a straight line a surveyor has to deal with, something of which the land department did not seem to have had the slightest conception.

Under section three of the act no patent could in any case issue for more than one vein or lode. As there was nothing in the statute to prevent another from locating within a certain distance of the original locator, there was no legal method of preventing the presence of undesirable neighbors. A blackmailer might locate an adjacent outcrop of the same lode, and the original locator might have upon his shoulders a suit involving all the horrors of a one-lode and many-lode contest. The only alternative would be to buy out the subsequent locator. The original locator might, through ill luck, locate some spur of a valuable lode and thus attract to make a location in his immediate neighborhood some one who would otherwise never dream of locating there. The latter might show by underground workings his to be the lode proper and the original location only a spur, and then, under some facile proof of local rule or custom giving him all "spurs" as well as dips, angles and variations, oust the prospector but for whose discovery he would himself never have located. There being no provision for side lines, this clause of the law of 1866 was also an open invitation to men with wealth and without conscience to locate in the immediate neighborhood alongside of a valuable ledge located by a man who was poor, offer him their own price for his claim, and, if he refused to accept, deliberately sink a shaft more or less vertical to take what did not belong to them, and while they were enriching themselves offer to give up the ledge upon the geological proof of its ownership which the law required and which they knew was utterly beyond the financial power of their victim to supply.

RELATION OF SURFACE TO LODE.

The law of 1866 intended to carry out the idea of the early rules and customs that the lode was the principal thing and the surface a mere incident.

It provided, however, that the patent should issue, among other things, "upon the payment to the proper officer of five dollars per *acre*." That word "acre" is the first shadow of the cloud no bigger than a man's hand. If the statute had prescribed that the lode was to be a gift, and that five dollars an acre must be paid for any incident surface ground, or if it had placed a fixed price upon every so many linear feet of lode, together with so many dollars an acre on any incident surface ground, it would have disclosed a more conscious purpose to keep the two properties absolutely distinct. But to prescribe that the *mine* should be paid for at five dollars an acre was to bring an English common-law habit of thought unnoticed into a strange environment. Inasmuch as there was no relationship whatever between the surface and the dimensions of the lode, most of the district rules had no provisions whatever for the size of the tract of surface land to be used. By custom or rules in most districts the miner simply used what surface he needed and claimed a possessory right to only so much as he actually occupied. The land department honestly made an attempt to carry out this provision of the law, and in doing so, while itself showing an ignorance of the topography of the country in its instructions concerning end lines, laid down a rule for the computation of areas that would have required every deputy miner surveyor to be an expert geologist. The instructions provided for the establishment of end lines *at right angles* to the ascertained or apparent general course of the lode, and permitted the applicant to apply for patent to a lode without any inclosing surface, the estimated quantity of superficial area in such cases being equal to a horizontal plane, bounded by the given end lines and the walls on the side of the lode. Why at right angles, gentlemen? Simply to faciltate an arithmetical calculation.

As a result of these instructions, patents were issued describing a small area of surface, which was occupied by the miner in connection with his improvements, within which area a portion of the lode was included, the remainder of linear feet claimed being indicated by a straight line extending beyond the defined surface and in the direction and to the extent claimed. The patents issued for the Idaho mine at Grass Valley, and the Maximillian mine at Sutter Creek are examples. The patents, like the statute, did not provide for bounding planes at the end of the lode,—they simply ignored the difficulty. When the courts of last resort came to construe these patents, however, they ignored the jealousy with which the miner always divorced property in the lode from any relation to the measurements of surface areas occupied, ruled that both end and side *surface lines* were contemplated by the provisions of the law of 1866, and that the miner under the patent was not permitted to follow the vein on its strike beyond the surface boundaries. The cloud had already grown considerably larger than a man's hand. Under this ruling the direction of the surface end lines became of enormous interest to the locator, because through them hereafter were to be drawn his end-line

boundary planes. The miner had been learning something of lode mining himself in the meantime, and had come to realize the extreme importance to him of the direction of those end-line boundary planes as the only means of saving the "rake" of his ore shoots, while here was a land department placidly directing its surveyors to establish end lines at right angles to the lode, in seeming utter geologic ignorance of the very existence of rake or ore-shoot. Under instructions from the land department, and, in many instances, through the ignorance of the miners themselves, patents were under the law of 1866 issued in many a fantastic shape, from that of a horse-shoe to that of an isosceles triangle, with heroic attempts in many instances to draw the end lines not simply at right angles to the general course of the lode, but at right angles to the local trend at the respective ends of the linear measurement on the lode. In the case of such patents the resultant extreme convergence, or unthinkable divergence, of the end lines produced constrained the courts, although they granted extra-lateral rights in all other ordinary cases of divergence, to deny extra-lateral rights altogether. The same result took place where the miner, through mistake, as in the case of the Flagstaff mine in Utah, made his location across, instead of with, the strike of his lode.

Under the decisions of the courts, the extent of the surface tract became of an importance never dreamed of at the time of the passage of the act. It is idle to speculate now whether it was ever necessary at all on the part of the courts to establish any relation between the surface and the extent of the lode in order to give the miner the full benefit of the terms of the act. For good or for evil, the judicial legislation had been done. It is very doubtful whether the significance of what had been done was fully realized at the time. The size of the tract was still, however, under the terms of the act, dependent upon the local rules and customs, and, under the circumstances, the very facility with which these could be changed or wiped out altogether, which had been one of their main recommendations in the days of shifting placer and early lode mining, now became one of the chief dangers. Customs could be established to affect the very size of the tracts asked to be patented. All provisions about how a mining claim could be located at all were still dependent on these transient and unstable rules and customs. It was one thing to recognize by law the locations already made and the rights already accrued under these rules and customs operating naturally, but it was quite another thing to make them the basis for future locations to be recognized by the law. "What are these mining customs to which the law pays such sweeping respect?" bursts out Dr. Raymond in 1869 (Mineral Resources, page 221). "They are edicts passed at twenty-four hours' notice by mass meetings of from five to five hundred men; it requires no more formalities to abolish or amend them than it did to make them—a notice posted on a door, a 'mass meeting' next day, and the thing is done. The records of titles are kept by an officer called the recorder, not known to the law, nor answerable for malfeasance

in office, except that if he were known to tamper with the books in his charge his life might be taken by the party wronged. The records are kept in a few districts in fire-proof offices and in suitable form, but more frequently in small blank-books, pocket-books, or scraps of paper, stowed away under the counter or behind the flour-barrel or the stove of a store or bar-room."

NO UNIFORMITY OF CONDITIONS OF POSSESSION.

Moreover, there was no uniformity of the conditions upon which possessory titles depended, especially in the matter of the necessary work to be done to hold the claim. This again was all made to depend on the local rules and customs, and they were, upon this subject, very lax and of all varieties. The report of a committee made to the Senate of the State of Nevada on February 23, 1866, as accurately described the situation in California as that in Nevada:

"In one district the work required to be done to hold a claim is nominal; in another exhorbitant; in another abolished; in another adjourned from year to year. A stranger, seeking to ascertain the law, is surprised to learn that there is no satisfactory public record to which he can refer; no public officer to whom he may apply who is under any bond or obligation to furnish him information or guarantee its authenticity. Often in the newer districts, he finds there is not the semblance of a code, but a simple resolution, adopting the code of some other district, which may be a hundred miles distant."

PLACER LAW OF JULY 26, 1866.

Obviously, the law of 1866 needed amending in many particulars, if it was to be of any other practical good than the declaration of a governmental policy. There was in the statute no provision providing for the patenting of placer claims. The first amendment was the statute of July 9, 1870, providing for the patenting of placer claims. This amendment consisted in adding six new sections to the Act of July 26, 1866. The first section of the amendment contains the pith of the new Act:

> "That claims usually called 'placers,' including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions, and upon similar proceedings as are provided for vein or lode claims; provided, that where the lands have been previously surveyed by the United States, the entry, in its exterior limits, shall conform to the legal subdivision of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre; provided, further, that legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons, or association of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; and, provided further, that no location of a placer claim hereafter made, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona-fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser."

The further sections of the amendment simply provide for the effective carrying out of these purposes. The land is patented under the "square location" theory, including all contained within planes drawn vertically through the exterior boundaries. No difficulties of construction have ever been experienced under this law, or any of its amendments. (The provisions of this amendment were by the Federal Act of February 11, 1897, expressly extended over public lands containing petroleum and other mineral oils, in order to overcome the incorrect rulings of Secretary of the Interior Hoke Smith, excluding such lands from its operation).

LODE LAW OF MAY 10, 1872.

There was no amendment of the Lode Law of 1866 with reference to lode claims, however, until the general mining law of May 10, 1872, entitled "An Act to promote the development of the mining resources of the United States." This statute re-enacted, with slight change, the provisions concerning placer mines. The idea sleeping in that inadvertent word "acre" had borne fruit, however, and in the matter of lode claims the new law made a radical departure. The new legislation was afterwards, 1878, codified in sections 2318 to 2346 inclusive, of the Revised Statutes, and in that form it constitutes the present mining law of the United States with reference to the public domain.

The salient features of the law are contained in three sections and a portion of a fourth:

> "Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.
>
> "Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.
>
> "Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs, and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, territorial and local regula-

tions not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

"Sec. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, 'and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. . . . "

RADICAL DEPARTURE FROM LAW OF 1866.

The expressions "all valuable mineral deposits *and the lands in which they are found,*" in section 2319, and "all the surface included within the lines of their locations," and of "all veins, lodes, and ledges throughout their entire depth, *the top or apex of which lies inside of such surface lines extended downward vertically,*" in section 2322, disclose the radical change, which leaves no question of the relationship between surface and extent of lode, but in express language in the statute rivets them together. It is not merely that "lead, tin or other valuable deposits" are added to the list of minerals; that the maximum length of vein or lode is 1500 linear feet, and the maximum width of surface 300 feet on each side of the middle of the vein; that the location must be marked on the ground so that it can be readily traced; that it is prescribed what the record shall contain when recording is required under the local rules; that not less than one hundred dollars' worth of labor shall be performed, or improvements made on each claim each year. These changes are important, and cured many of the troubles encountered under the law of 1866, but their significance is not to be compared with that introduced by the doctrine of apex. There was now no longer any question of the absolute dependence of the extent of the lode upon the conformation of the surface lines. The language is (section 2320): "No *claim* shall extend more than three hundred feet on each side of the center of the vein," not "no incidental

surface shall extend, etc." "The end lines of each claim shall be parallel to each other," and the courts have since decided that the miner would lose all extra-lateral rights of the lode on the dip unless the end lines are parallel. That settled the question of a relation between surface and lode. There could be no mistaking the cloud now.

By this law all patentees of one-lode under the law of 1866 became the owners of all other lodes within the surface area of their claims, with the same extra-lateral rights as to such adjacent lodes as could have been acquired under the new law. The danger of blackmail, through lateral locations, too, was removed to a distance of 300 feet. What, however, were to be the rights of a locator on a lode whose width was actually more than six hundred feet allowed as the surface width of a claim? Is the adherence to the doctrine of the relation of surface area to the lode to be so absolute as to actually shut off a portion of the lode itself, or in such case is the effect of the courses of the boundary lines to be limited simply to the question of the end-line planes?

THE LAW OF THE APEX.

I am not going to discuss the doctrine of the apex or attempt to point out any great number of new and important questions that have come up, and must yet necessarily come up for construction under it, arising out of the geological and other conditions that will have to be met. That would mean an exposition of the law, instead of a history of it. A full discussion of the law itself will be found in Dr. R. W. Raymond's masterly monograph on "The Law of the Apex," and Judge Curtis H. Lindley's conscientious and scholarly treatise on "The Law of Mines." I am trying to point out the historical fact that there was a change, and the historical significance of that change. In other words, to obtain any rights under the law of 1872, a prospector must not simply find or attempt to locate a lode. The apex of that lode must be within his surface boundaries, or he gets no rights whatever, and whenever, through his mistake, no matter how natural, the apex crosses any of the surface boundaries, he loses rights that he would otherwise own. The position of the apex with reference to the bounding lines becomes the touchstone of almost all his rights.

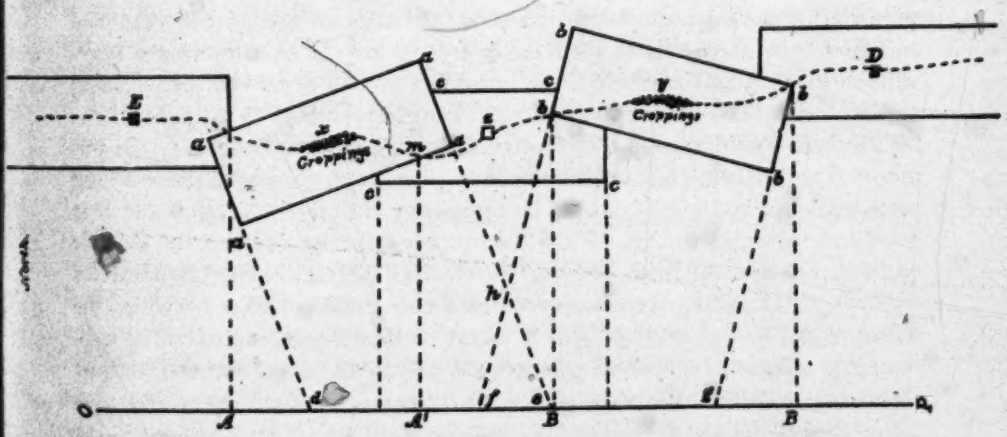
In view of these facts, it will not be without profit to note some of the immediate difficulties that were inevitable from the working of the law, when it is remembered that in the early workings of a lode it is, in many instances, impossible at once to determine the top or apex, course or strike, or angle or direction of the dip, of the lode. The apex, as intended to be understood in the Revised Statutes, is, roughly speaking, the end or edge of the vein on or nearest the surface. In the ideal lode the locator would have no trouble, provided he get his apex inside his boundary lines and his side lines follow the general course of the lode. This general course, however, he cannot always determine exactly, and, under the short time allowed for locating, especially if he must hurry to head off other possible locators, he must often

take for granted. The apices of a narrow lode, especially in certain conformations of country, often deviate considerably from a straight line, and it is often easy at first to mistake their course, which is such as to pass beyond the side lines of a claim. We would then not have to look far for complications.

SOME PROBLEMS OF LAW OF APEX.

Chief Justice W. H. Beatty, than whom no one in the United States is more entitled to be listened to with the highest respect in questions of this kind, early suggested a number of such difficulties, many of which were not long in coming. Writing upon this point in his testimony before the public lands commission, November 21, 1879, while still Chief Justice of Nevada, he said (Report, page 402):

"Mining locators are granted the exclusive right of possession of their surface claims, and all veins, etc., the tops or apexes of which lie inside of their surface lines extended downward vertically, although such veins in their downward course may extend beyond the side lines of the surface claim. No locator, however, has the right to go outside of vertical planes conforming to his end lines, notwithstanding the true dip of his lode would carry him beyond. In every patent of mining ground a right is reserved to other locators to follow their lodes on their downward course into the ground so conveyed. (Revised Statutes, section 2322.)



"This being the law, the annexed diagram illustrates a few of the numberless difficulties that will occur in applying it to surface locations that have not been made in exact conformity to the true and ultimately ascertained course of the lode. The line O P represents the course of a lode extending due

north and south, and is supposed to be drawn between its extremities at the depth of a thousand feet from the surface. The dip of the lode is to the west, and the outcrop appears at two points *x* and *y*. The top or apex of the lode where it does not reach the surface is indicated by the dotted line connecting *x* and *y* and extending beyond in either direction. Long before any better means exist of ascertaining the true course of the lode than is furnished by its outcrop A makes a location at *x* marked *a a a a*, and B makes a location at *y* marked *b b b b*. In due time their claims are patented. Then C discovers the lode at *z* and makes his location *c c c c*, and later still D and E make locations as indicated, north of A and south of B respectively. The straight dotted lines A *a* A *'m* B*b* and B *'b* indicate the sections of the lode the tops or apexes of which are inside of the surface lines of A, B and C respectively. The dotted lines *d a* and *e a* and *f b* and *g b* show the sections of the lode which are included by vertical planes conforming to the end lines of A and B respectively.

"Now come the difficulties. According to my definition of top or apex of a lode, and under what appears to me the only admissible construction of the law, C, although he locates after the patent to A and B, is nevertheless the owner of all that section of the lode included by the lines A *'m* and B *b*, indefinitely prolonged, notwithstanding it is mainly included from the very top in the prolongation of the end lines of A and B. C is the owner because he has located the top or apex, and A and B are not owners for the reason that their claims do not include the top or apex of this section. Supposing the lode to be valuable, it can readily be seen what controversies will arise as the progress of development begins to show the true course of the vein, and enlightens the parties as to their boundary rights. Even without the intervention of C, A and B would come in conflict at *h* in regard to the widening section *f h e*. But in the case supposed, C would restrict A to the line A' *m* as his southern boundary, and B to the line B *b* as his northern boundary. By this means A and B, being restricted by their end lines from mining on the widening section A *a d* and *g b* B', would be completely cut off—A at 2000 and B at 3000 feet from the surface. Then this further difficulty would arise, that the entire top or apex of the lode being included in the various surface locations of A, B, C, D and E, there would be no means under the law by which the widening sections A *a d* and *g b* B' could be located or granted. The only remedy would be to cancel the patents of A and B, and allow them to readjust their surface lines. Before this, however, another controversy would have arisen between B and C, and still another between B and D, in regard to the excessive claim of B on the course of the lode, which it will be seen extends to a length of about 1600 feet, whereas the law allows him at the utmost but 1500 feet. These hints will suffice to indicate the nature of the task which the commission have before them; and having no plan to suggest for meeting the difficulties in their way, I take my leave of the subject."

REASONABLE TIME NEEDED FOR MARKING.

In the provision for the marking of exterior boundaries upon the ground, under the present provisions of the law of 1872, the rights of the discoverer of a vein are not fully protected. Unless he be given a reasonable time to mark his boundaries upon the ground, either under a State statute, or a local rule, or the decision of the Supreme Court of the United States, he may make many mistakes vital to his interests. As a matter of fact, the trend of the California decisions on this point is against him, though at the same time against the trend of the decisions of almost all the other States and territories except Oregon (Lindley, sections 339, 371, 372), and of the Supreme Court of the United States (Erhardt vs. Boaro, 113 U. S., 527). What is a reasonable time? Even the decision of the United States Supreme Court favoring a reasonable grant of time is for but a short grace at best. A statute of this State was passed in 1897, the best point in which was that the discoverer was granted sixty days after his preliminary location in which to mark his boundaries, but it contained other provisions, which were considered cumbersome in practical working, and, under pressure of the sentiment in the mining counties, was repealed in the session of 1899. As the marking of his boundaries is a part of the act of location, *without which the act of location is not complete*, can the discoverer afford to wait, lest some one else effect a complete location before him? It has been shown that unless he is given a reasonable time he may mistake the position of his apex and the course of his vein. But how much would be a reasonable time to ascertain the *rake of his pay shoots*, in order that he might slant his end lines so as to save as much of them as possible? Many a mine has developed a pay-shoot near either end, and that was all there was of the mine, and unless the discoverer had a chance to draw his end lines properly, he might lose the whole of it in a few hundred feet. Whatever is wanting in law in this respect can be cured by amendment of the statute itself.

ABOLITION OF RULES, REGULATIONS AND CUSTOMS ADVOCATED.

"The principal, the vital defect in the existing law," says Chief Justice Beatty (Report, page 396), "is this permission to make local rules. There are, I have reason to believe, other important defects in the law, but as to most of these there are more competent judges, and I leave it to them to point out the evil and suggest a remedy. But as to the practical workings of the local rules and customs of miners, when allowed the force of law, I have very decided opinions, which I feel that my means of knowledge justify me in stating with some confidence in their correctness. I believe that the whole subject of mining locations is an extremely simple one, which may easily, and certainly therefore ought to be regulated by one general law, the terms and existence of which shall be established by public and authentic records, and not left to be proved in every case by the oral testimony of witnesses, or by writing

contained in loose papers or memorandum-books, such as are often dignified by the name of 'mining records.' I am convinced, moreover, that the tainting of every mining title in the land at its very inception with the uncertainty which results from the actual or possible existence of rules affecting its validity, perfectly authentic evidence of which is nowhere to be found, is a stupendous evil. Experience has demonstrated that such an uncertain state of the law is a prolific source of litigation, and no experience is required to convince any man of ordinary intelligence that it must have the effect of depreciating the value of all unpatented claims by deterring the more prudent class of capitalists from investing in them. That the subject is simple enough to be embraced in one general law is proved by the fact that the laws of the various districts, although differing in details, are in substance identical, and are substantially contained in the existing acts of Congress. . . .

"What room is left, then, for any local regulations upon the only points that the miners have ever assumed to regulate? Just this: The miners *may*:

"First—Restrict themselves to smaller claims than the Act of Congress allows.

"Second—Require claims to be more thoroughly marked than would be absolutely necessary to satisfy the terms of the Act.

"Third—Require more work than the law requires.

"Fourth—Provide for the election of a recorder and the recording of claims.

"As to the first three points, it may be safely assumed that no such regulations will be adopted in any district hereafter organized. Mining districts are organized by those who discover valuable ore bodies outside of the limits of existing districts, and these first comers will be sure to take all the law allows them to take, and will do nothing on their part to increase the difficulty of holding what they have got. Later comers, not being able to deprive their predecessors of rights already vested, will find their advantage in claiming any new discoveries on terms as liberal as others have enjoyed, and it will inevitably happen that the privileges of the law will be in no wise abridged. Permission to abridge them is therefore wholly superfluous.

"In some of the older organized districts the local rules do restrict the size of claims; but in no case within my knowledge do they exact as much as the statute in regard to marking and working claims. Under the regulations restricting the size of claims in these old districts rights have vested which ought to be protected; but in amending the law, with a view to its prospective operation in old as well as new districts, nothing is to be gained by permitting miners any longer to regulate either the size of claims or the mode of marking them, or the amount of work to be done on them. The only effect of such permission is to make the terms of the law upon these important points everlastingly uncertain, without the least prospect of its ever being improved.

"The fourth point at present left open to regulation by the miners remains to be noticed. All the district rules with which I am acquainted provide for

mining recorders and the recording of claims; but under existing legislation such rules are worse than useless. The statute, it will be observed, does not make any notice or record obligatory, or define their effect. If the miners themselves made no regulation on the subject, claims would be located by simple compliance with the terms of the statute, which contains in itself ample provision for everything essential to a location; *i. e.*, size of claim and marking and working. Under the statute the vein is located by means of a surface claim, which not only can be, but must be, marked on the ground. When this is done all that the notice and record were ever intended or expected to accomplish is effected in a manner far more satisfactory and complete. In place of a very imperfect and often misleading description of the claim, there is a plain and unambiguous notice to the world of its exact position and extent. No reason exists, therefore, for retaining in the law a provision under which it may be made obligatory, by local regulations, to post and record a notice in addition to the marking of the ground. The monuments on the ground do well and completely what the notice and record do only imperfectly and in part.

"It may be asked why, if this is so, do the miners, who ought to understand their own business, persist in requiring a notice and record. The answer is, that marking locations by such means has with a majority of miners become an inveterate habit; and the custom, like many other customs, outlives the causes which called it into existence. For twenty years—from 1852 to 1872—lode claims were located without reference to surface lines, and, as above explained, their locality and extent could only be indicated by means of a notice. Notice and record were therefore an essential part of the system. Now, however, since the law has applied the system of surface locations to lode claims, they have ceased to be of any importance as independent and substantial requirements. But the miners have generally failed to perceive that there has been any radical change in the system of making locations. They cannot divest themselves of the notion that the surface is still a mere incident to the vein, and that they must hold by means of their notice fifteen hundred feet of the vein, wherever it is found to run, notwithstanding their surface lines, as marked on the ground, may not include so much.

"But another evil remains. In the nature of things there must always exist the necessity in the assertion of any mining title of proving compliance with the law prescribing the conditions upon which it may be acquired; but there is no necessity for leaving the terms and existence of the law itself to be the subject of proof by evidence, the best of which is always open to dispute. As long as there are local regulations anywhere, and as long as there may be local regulations everywhere affecting the validity of mining titles, no man can ever know the law of his title until the end of a trial in which it is involved. In districts where the rules are in writing, where they have been some time in force and generally recognized and respected, the law may be tolerably well settled. But there is often a question whether the rules have

been regularly adopted or generally recognized by the miners of a district. There may be two rival codes, each claiming authority and each supported by numerous adherents; evidence may be offered of the repeal or alteration of rules, and this may be rebutted by evidence that the meeting which undertook to effect the repeal was irregularly convened or was secretly conducted in some out-of-the-way corner, or was controlled by unqualified persons; customs of universal acceptance may be proved which are at variance with the written rules; the boundaries of districts may conflict, and within the lines of conflict it may be impossible to determine which of two codes of rules is in force; there may be an attempt to create a new district within the limits of an old one; a district may be deserted for a time, and its records lost or destroyed; and then a new set of locators may recognize it and relocate the claims. This does not exhaust the list of instances within my own knowledge in which it has been a question of fact for a jury to determine what the law was in a particular district. Other instances might be cited, but I think enough has been said to prove that local regulations being of no use ought to be abolished.

"The magnitude of the evil resulting from the uncertainty of mining titles will, perhaps, be appreciated when I say that after a residence of seventeen years in the State of Nevada, with the best opportunity for observing, I cannot at this moment recall a single instance in which the owners of really valuable mining ground have escaped expensive litigation, except by paying a heavy blackmail." This defect in the law, like the one concerning a want of a reasonable time to mark boundaries in making a location, can be cured by an amendment of the law itself, and, in this instance all that is necessary is a provision that all future occupation, location, or purchase of public mineral lands shall be governed by laws of Congress, to the exclusion of all local customs, rules and regulations and State and territorial law.

THE EXTRA-LATERAL RIGHT AND THE SQUARE LOCATION.

A discussion of any remedy for the remaining source of litigation resulting from the provisions of the statute would bring us to the parting of the ways. Probably any system that allows the miner the right to follow his lode on the dip outside vertical planes drawn through the surface lines of his location must bring in its train more or less litigation. Where the miner who has sunk upon his lode has become the defendant at the instance of some one who has located upon his dip, he ought generally without difficulty by means of his underground workings to be able to prove his title to his lode, though the expense is often great on account of the necessity of reopening old works. Where, however, he has opened his mine through a vertical shaft and crosscut to his lode, he might, in such a case, be compelled to expend thousands and thousands of dollars in work that is utterly useless to him for all other purposes, simply to prove the identity of the lode he is working beneath his neighbor's surface with the one he located. He cannot escape the burden of

this positive proof for the judicial construction that has brought us the law of the surface has brought with it the English common-law accompaniment that each locator has the prima facie right to all vertically beneath his surface. Where another is mining upon the dip of his lode, and he is seeking affirmative relief against the conscious or unconscious trespasser, he may not be able in the environment of his own operations to make the satisfactory proof, but will have to push on, against his other plans and interests, and do an immense amount of "dead" work until he breaks in upon the trespass. On account of peculiar surface boundaries he might be compelled, on the analogy of a bill of discovery, to apply to the court for permission to enter the works of the trespasser and, at his own cost, make ruinously expensive upraises to the surface, a permission in many jurisdictions impossible to obtain, in order to prove the identity of the lode. I have made no mention of the vexatious delays, delays which are sometimes used by the scoundrelly corporation trespassing to manifest its consciousness of guilt by efforts of reorganization and the like, nor to the enormous damage often caused by the cessation of operations in other portions of the mine rendered necessary by the expense of the abnormal amount of dead work useful alone for the purposes of the litigation. The expenses rendered necessary by these cases and by those arising from mistakes in the location of the apex and of the strike of the lode are mounting into millions. Only the wealthy, whether corporations or individuals, can indulge in this luxury.

These considerations have brought despair to many mining men and doubt as to advisability of any system providing for "the extra-lateral right." They point to the tranquillity under the English common law titles of the lead and copper mines east of the Rocky mountains and of the placer mines in our own State, where an exact adjustment of rights depends simply upon exact surveying. The increasing familiarity of many of our prominent mining men with the "square location" system of Mexico and its results has had much to do with fostering a sentiment in its favor. The agitation has already begun for the adoption of the system of "square locations." As early as 1880, B. C. Whitman, of Nevada and Judge Hallett, of Colorado, openly advocated it, and the public land commission urged it upon Congress, while Chief Justice Beatty and Dr. R. W. Raymond, though pointing out where the present law must be amended, strenuously contended for the extra-lateral right, at any rate until the era of active prospecting shall have actually passed away (Report public land commission, of 1880).

I do not intend to enter into the merits of the controversy between the champions of the extra-lateral right and square locations. In an article upon the History of Mining Law in California we would be led too far apace. If, possibly under conditions analogous to those that obtained in Prussia at the time, the extra-lateral right shall be abolished, then its abolition will be history,—but not till then. The extra-lateral right is, moreover, a vested

right at present in all lode patents fulfilling the conditions of the present law, and in all the numberless locations duly made under the lode rules, customs or regulations. No amendment can take that vested right away. In all lode mines that at present exist where compliance has been had with the condition of substantial parallelism of end lines, the extra-lateral right is indefeasible, unless the abandonment of the possessory ownership by the owner shall throw the mine itself back into the public domain. And legislation on the subject, could at most, then, only affect future locations.

After all, no matter how honestly the advocates of the two systems contend, the conclusions reached depend largely upon the point of view. The large mine operator, who buys and opens, but who does not discover or locate mines, upon whose shoulders falls the burden of the costs of litigation,—he, with his lawyers and his surveyors and his experts, usually leans toward the "square location." The prospector and the discoverer feels in his every fibre, no matter what factitious sacredness judicial construction or the statute may have thrown about the idea of the surface, that the lode itself is the only real property, as it is the only thing he has been hunting, and when he finds the lode his desire "to stay with it till it reaches ————" is a passion that can not be understood by one who has never owned a lode mine and worked in it or who has never lived in a mining community. The discoverer is not of the class that has usually had to bear the costs of mighty law-suits and therefore he loses no sleep over the possible litigation. And, even if he does take the chance of losing the mine, he is willing to do so with the same cheerfulness with which he spent the greater part of his life on the chance of finding it. As long as the law recognizes his right, he is willing to take his chances of being able to hold on to the lode. He has long learned to look upon mining with the same game philosophy with which John Oakhurst looked upon life, as at best an uncertain game, and to "recognize the usual percentage in favor of the dealer."

SUGGESTED AMENDMENTS OF LAW OF 1872.

The act of 1872, with further congressional amendment putting all matters concerning location in the terms of the act itself, abolishing all local rules, regulations and customs and superseding all State and territorial enactments, arranging for the discoverer to have a reasonably liberal time within which to mark his boundaries before he shall be bound by them, and regulating effectively the performance of the work necessary to hold the possessory right to the claim, will be immensely improved. The mistakes incident to hurried location and consequent ignorance of the details to give it effectiveness will be reduced to a minimum. The law has already stood many a severe geological test. It has had to undergo the test of the flat wavy veins of the neighborhood of Nevada City. It may have to deal with lodes like the Royal Consolidated in Calaveras County, where one can walk down the shaft, or

with the abnormal width of the mother lode in some portions of Amador County. The law that could stand Carson City-North Star, South Scotia-New Idea, Wyoming-Champion, Providence-Champion and many another problem already solved, will have no trouble in California. The mountains and gulches of California will probably never try it with anything so hard as Leadville.

CERTAIN STATE MINING LEGISLATION.

It would be manifestly beyond the scope of an article of this kind to stop to point out all the different laws that were passed and repealed in California with reference to the exclusion of Chinese from the mines, and the attempts to levy and collect a Foreigners' Tax. There would be no use in relating the history of the enactment of any acts, whether in general or codified form, providing under the law of eminent domain for the condemnation of sites for tunnels, ditches, flumes, pipes, and dumping places for working mines, or for outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from the mines, for the reason that in all instances where any attempt has been made under the provisions of the act, the Supreme Court of this State has foiled the atempt by holding that mining is not a public use. The act establishing a system of mine bell signals introduced by Senator Voorheis, of Amador County, and approved March 8, 1893, cannot be said to belong to the law of mining in California, in the sense in which I have been discussing that subject. It is significant, however, as indicating the immense strides in the industry of lode mining, and the large scale of lode mining operations as distinguished from its small beginnings, that such a system of bell signals was found necessary and convenient. Likewise, the act for the protection of stockholders in mining companies, approved April 23, 1880, and its amendment, more properly belongs to the law of corporations than that of mining. The peculiar associations, too, known as mining partnerships, which arise where several owners of a mine engage in the actual working of it, belong properly to a treatise on partnership, though their law of today is but the statutory enactment of a distinctive California common law, which, though in many respects similar to the "cost-book system" of Cornwall and Devon, blossomed out of the tenderest relationship of the days of '49, the days of Tennessee and his "pardner." They spread out into all the states and territories where went the California law of mining properly so-called, were early crystallized in decisions of the courts, and enacted into statutes which were, with all their features distinctive from ordinary partnership, re-enacted into the Civil Code, Sections 2511, 2520, in 1872.

HYDRAULIC MINING AND CALIFORNIA DEBRIS COMMISSION ACT.

One of the most interesting phases of the mining law in California is the federal statute creating the California Debris Commission, following

the closing down of the hydraulic mines in the Sacramento and San Joaquin watershed as a result of the federal injunction in the test case of Woodruff vs. The North Bloomfield. The act was the work of Mr. Caminetti, of Jackson, then congressman from the Second District, and deserves a more detailed notice than I shall be able to give it in this article, as it is a unique example of governmental intervention. The government had sold the agriculturalists in the valley their land and the miners in the mountains their placer claims, had given each patents with equal covenants "to have and to hold," and had collected from each side the fees for the land at the land office with absolute impartiality. It had been decided in the North Bloomfield case that the debris from that mine, the result of mining by the well-known hydraulic process, was injuring the lands adjacent to the navigable streams below. The magnitude of the extent of hydraulic mining had been its undoing. The choking up of the overtaxed channels of the rivers, the covering up of valuable adjacent lands, and the injury to navigation brought all parties down upon the offending industry. Private individuals invoked the doctrine *"ut non laedas,"* the State protested against interference with its water highways, and the federal government, despite the covenant in the deed, objected to the obstruction to navigation. The bitter feeling engendered between the interests injured and the industry was so great that for some years no effort was made towards any rehabilitation of hydraulic mining.

In the decision of the Woodruff-North Bloomfield case, brought by an individual, and the People vs. Gold Run case, brought by the State, the hydraulic process in and of itself had not been declared unlawful, but hydraulic mining as theretofore conducted where it contributed or threatened to contribute in a material degree to the filling up of river channels, injuring navigation, or covering the lands adjacent to the navigable streams with debris, was declared a public nuisance and prohibited. Judge Sawyer, who decided the Woodruff-Bloomfield case, realized the awful damage to entire sections of the State by the closing down of these mines, and left a fair opening, making certain suggestions of possible conditions under which the injunction might be dissolved. The North Bloomfield Company constructed the suggested impounding works, and the United States then brought its action for an injunction against the North Bloomfield Company. The injunction was denied, the Court holding that by reason of the impounding works constructed the light matter floating over the dam was harmless, that danger to be apprehended from the operation of the North Bloomfield mine, with its impounding reservoirs as constructed and used and intended to be used was too remote to justify the Court in issuing an injunction.

Thereafter, the California Debris Commission Act was passed. The government could not afford to admit any moral responsibility and it did not desire avowedly to pass any legislation in aid of any special industry, but it could, on the theory of aiding navigation, carry out a certain patrol of the

navigable streams. The Act was approved March 1, 1893, and provides for the creation of a commission of three members, to be known as the California Debris Commission, and to be selected by the President, by and with the advice and consent of the senate, from officers of the Corps of United States Army engineers, which commission has its authority and exercises its powers under the supervision of the chief of engineers and direction of the Secretary of War. The jurisdiction of the commission with reference to hydraulic mining extended to all such mining in the territory drained by the Sacramento and San Joaquin Rivers. Hydraulic mining, as defined in section eight thereof, directly or indirectly injuring the navigability of said river systems carried on in said territory other than as permitted under the provisions of this act, was prohibited and declared unlawful.

It was made the duty of the commission to mature and adopt such plans as would improve the navigability of all the rivers comprising the system, deepen their channels, and protect their banks, with a view of making the same effective as against the encroachment of, and damage from, debris resulting from mining operations, natural erosion, or other causes, and permitting mining by the hydraulic process to be carried on, provided the same might be accomplished without injury to the navigability of the rivers, or to the lands adjacent thereto. The commission was also empowered to examine, survey, and determine the utility and practicability of storage sites for the storage of debris, with a view to the ultimate construction of impounding dams and reservoirs, and permitting hydraulic mining to be carried on behind them. It prescribed a complete system for application of those desiring to submit themselves to the jurisdiction of the commission, of the necessary notice, publication, examinations, hearings, etc. The works are to be constructed under the direct supervision of the commission, but at the expense of the parties, and the permit to commence mining is not issued until after inspection and approval of the completed work. This permission may, for cause, be revoked, or its terms modified from time to time.

Under the provisions of this act a number of permits have been granted and a number of mines have started again. The courts are being again appealed to, however, for injunctions, and the Red Dog hydraulic mine has already been closed down by injunction from the Superior Court of Sutter County, and suits have been begun and are threatened against many other mines operating under the jurisdiction of the commission. It will be noticed how absolutely hydraulic mining is placed under the thumb of the commission. The terms of the act contain, moreover, the drastic provision that the petition to the commission to be permitted to mine

> "shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, *or any law that may hereafter be enacted*, or by

such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom."

While this act was pending in congress there was being crowded through the legislature of California an act introduced by Attorney General Tirey L. Ford, then State senator from Sierra, Plumas and Nevada counties, which, as Sections 1424 and 1425 of the Civil Code, was approved March 24, 1893, the terms of which are as follows:

"1424. The business of hydraulic mining may be carried on within the State of California wherever and whenever the same can be carried on without material injury to the navigable streams, or the lands adjacent thereto.

"1425. Hydraulic mining, within the meaning of this title, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank."

Section 1424, it will be seen, is in direct conflict with the provisions of the Debris Commission Act. It is also in conflict with the judical interpretation given to the provisions of that act, and is, therefore, probably nugatory in the Sacramento and San Joaquin watershed. Section 1425 will be of value as defining the sense in which the words "hydraulic mining" were used in California prior to its enactment only in case it is really the codification of a definition actually accepted at the time and before the federal act was passed.

The North Bloomfield Company, as has been seen, had constructed its restraining works before the creation of the commission and those restraining works had been decided in a case by the United States against the Company in the United States Circuit Court to be sufficient and application of the government for an injunction denied. It, therefore, did not submit itself to the jurisdiction of the commission. Several years after the act was passed the government again brought an action against the North Bloomfield Company, adding to the old allegations supplemental averments of the passage of the Debris Commission Act and the failure of the company to submit itself to the jurisdiction of the commission and secure from it a permit to conduct its mining operations behind its dam. Conceding that the mine was being operated without injury to the navigable streams, as found at the former trial, Judge Ross nevertheless granted the injunction, holding that until the debris commission appointed under the act should find that such mining can be carried on without causing the prohibited injury, *all* hydraulic mining within the territory drained by the Sacramento and San Joaquin River systems, is unlawful. Here was the constitutionality of the act as a quasi police regulation upheld in favor of the government and against a mine.

Such a test of the constitutionality of the measure on the point indicated is, however, of no benefit to the miners. Why the issue is postponed is incomprehensible. The constitutionality of the act should be tested in some case against a company operated under a duly obtained permit from the commission, not in a case against a company not operating under such a permit. The

miners ought to be as anxious as the farmers to ascertain whether they are moving in a fool's paradise or on the solid earth. It seems unfair to have men go to the enormous risk and expense of constructing such impounding works as will satisfy the commission until the constitutionality of the act is fairly tested. Is, or is not, the act contrary to the provisions of the fifth amendment of the constitution of the United States? Does or does not the act, directly or indirectly, deprive any person of property without due process of law? Is the State deprived by it of any right guaranteed it in the constitution of the United States to protect the navigability of its streams? If the act shall be held to be constitutional and the miners are satisfied to take their chances under it, then they must submit to the jurisdiction of the commission, for otherwise their hydraulic mining, no matter how little injurious, will be unlawful. They would then at least have a feeling of security in expending the moneys necessary to take advantage of its provisions, that the act itself will not be declared unconstitutional over their heads. If the act shall be held unconstitutional, then those who have already submitted themselves to its jurisdiction will cease expending further money under it and can apply for the cancellation of their surrenders on the ground that they were given without consideration. Whatever the result, the question of the constitutionality of the act should be immediately settled, one way or the other, once for all.

——*JOHN F. DAVIS.*

Jackson, Amador County, Cal.

THE CELEBRATED "TRUST WILL" OF JAMES G. FAIR

BY THE EDITOR

James G. Fair

The CELEBRATED "TRUST WILL" *of* JAMES G. FAIR

James Graham Fair, who threw off his miner's shirt to enter the United States senate, was a typical Californian. He was not still working with pick and shovel when chosen a federal senator; he had become possessed of great wealth, but he was still superintendent of the mines owned by himself and partners, and in that capacity he personally inspected all the underground operations, going through tunnels and levels, and up and down shafts at all seasons, and so carrying his life in his hand by day and by night.

He was born in Clogher, Ireland, in December, 1831. His parents belonged to an old Tyrone County family of Scotch descent. When twelve years of age he came to America with his father, who left him with friends at Geneva, Ill., while he returned for the remainder of his family. Impatient at his father's delayed return, he set out with perfect self-reliance to make his fortune.

Beginning in Chicago and doing whatever presented itself, he remained there until the excitement following the gold discovery in California turned the tide of immigration to the Pacific coast. In company with many associates, since known as prominent pioneers and business men, young Fair began the tedious journey across the plains in the early fall of 1849, arriving in California in August of the following year. He at once went to the diggings and began work in the placers at Long Bar, on the Feather River, in Butte county.

The well-built figure and merry wit of the young prospector made him friends and gained him many advantages, but despite his cheerful spirit and great zeal his hard labor yielded him but scanty returns.

He became discouraged for a time and abandoned gravel for quartz mining, his next venture being at Angels, in Calaveras county. The change greatly improved his prospects, and, adhering to quartz mining as his specialty,

his efforts in Calaveras and other parts of the great mineral belt resulted in quite substantial returns.

At Shaw's Flat, in Calaveras county, may be found still standing the cabin in which Mr. Fair lived from 1851 to 1853. It is a two-story structure that spreads over as much ground as a modern dwelling of twenty rooms. It is almost as immovable as the rocks. This was the scene of Fair's first big strike, which was made in his back yard. Fair and Talton Caldwell lived and mined together without any marked success until the former took to trailing a party of natives and Chilenos who occasionally passed through the grounds surrounding the house, and after an absence of a few hours invariably returned with sufficient dust to get drunk. Following them Fair soon came to the remarkable diggings they were working, on the edge of the grounds where a little garden had been planted. Fair and Caldwell quit gardening and took out $180,000 in dust and nuggets in a few weeks.

After Fair's clean-up at Shaw's Flat he moved to Angels, and from that camp courted and married Mrs. Theresa Rooney, the proprietress of the most flourishing boarding-house in Carson Hills. The house in which he was married is still in good condition.

Finally his rapidly acquired insight into the possibilities of the State's great industry led him to Virginia City, Nevada, where he expected substantial developments from the Comstock lode. He prospected a number of locations with varying fortune, and in 1865 his executive ability attracted the attention of the directors of the famous Ophir, and he was tendered its superintendency. He was so successful in that position that two years later he took the management of the Hale & Norcross mine. Shortly after this he formed his first business connection with John W. Mackay, and later they formed a partnership with Flood and O'Brien, which became known as the world-famous Bonanza firm, of which Mr. Mackay is now the sole survivor.

This quartet of financiers and experienced miners was probably the strongest association of the kind ever formed. They soon obtained practical control of the Hale & Norcross, which, under the management of Fair, soon fortified the capital of the partners with an additional half million dollars.

This was the preliminary step towards the consummation of their project of developing the great lode. They soon acquired the control of what was then known as the California, the Kinney, and White and Murphy, called the "Central Nos. 1 and 2" mines. These properties were consolidated under the title of Consolidated California and Virginia, and the work of discovering and unlocking the great main coffer of the "Mother Lode" began in earnest. Failure would have reduced the quartet to poverty, but they resolutely continued their gigantic work.

Their wonderful "find," the location and production of these vast deposits, added at least $150,000,000 to the wealth of the coast in three years, and made the partners richer than their wildest dreams.

Many other mining investments and profitable ventures enlisted Mr. Fair's energies up to the time when he turned his attention from mining to the diversified field of business investment. About 1869 Mr. Fair began his purchases of real estate, chiefly in San Francisco and vicinity. He continued those investments for many years with a sagacity that added many millions to his original capital. He was one of the largest holders of profitable realty in San Francisco.

But there were other directions of enterprise wherein his ability and foresight were noticeable. About the year 1880 he projected, built and equipped the South Pacific Coast Railroad and its ferry system in the face of obstacles and opposition that would have discouraged the ordinary man, no matter how financially strong. This was the road from San Francisco to San Jose and terminating at Santa Cruz. Its location and ferry properties, with ultimate prospects of Eastern connection, made it practically the key to the railroad situation, so that its absorption by the Southern Pacific became a virtual necessity, and it was sold to that corporation in 1887 for $6,000,000.

In 1880 Mr. Fair was chosen as a Democrat by the Nevada legislature to represent that state in the United States senate. During his term he was industrious in endorsing and forwarding anti-Chinese legislation. He served a full term from March 4, 1881 to March 4, 1887.

In September, 1887, he succeeded James C. Flood, resigned, as president of the "Nevada Bank of San Francisco," and then fixed his residence at San Francisco.

Those concerned will find Mr. Fair's views on Adolph Sutro, the Sutro tunnel, and the silver question, in the San Francisco *Bulletin* of March 12, 1893. And, as a closing act of his career, he endeavored to control the wheat market, and, at the time of his death, he had upwards of one hundred and sixty-five thousand tons purchased and owned outright by him, and stored in the various warehouses, and was still buying. The ownership of the wheat being revealed by the litigation over his estate, it became necessary to sell it at a loss of over a million dollars.

On the 28th day of December, 1894, James G. Fair died at his apartments in the Lick House in San Francisco. The day following his death there was filed in the office of the county clerk of that city and county, his last will and testament, bearing date the 21st day of September, 1894, together with a petition by Thomas G. Crothers, a nephew of deceased, for the probate thereof, and the issuance of special letters of administration to himself and James S. Angus, Louis C. Bresse and W. S. Goodfellow, who were nominated therein as executors thereof. The unusual haste in the filing of the will can best be explained by a statement that it was Senator Fair's express command that his will be filed immediately upon his demise, the logic of which has been justified by subsequent proceedings instituted by various persons against his estate.

The will, after bequests to charities, amounting to two hundred thousand dollars, and devises to relatives aggregating eight hundred thousand dollars, devised the rest and residue of his estate to trustees therein named to be by them managed and controlled during the lives of his three children, Theresa A. Oelrichs, Charles L. Fair and Virginia Fair, the income thereof to be paid over to his said children monthly, in equal proportions, and upon the death of either of said daughters, to pay over the one-third of said income to which she, if living would be entitled, to her children or descendants, if any there be, otherwise to his surviving daughter, and upon the death, during the life of said son, of said surviving daughter, leaving children or descendants, then to her said children or descendants (providing for an admittedly illegal accumulation); and upon the death of the son to pay over the one-third of said income to which he if living would be entitled, to said two daughters in equal proportions or to the survivor of them. Upon the death of his three children or the survivor of them, the trustees are to convey to the children or descendants of his daughter Theresa, the one-fourth part of said trust property and estate, and to the children or descendants of said daughter, Virginia, the one-fourth part of said trust property and estate, and the remaining one-half of said trust property and estate to transfer and convey in equal shares to his brothers and sisters, and to the children of any deceased brother or sister by right of representation. In case either of said daughters die leaving no children or descendants the one-fourth part of said trust property and estate herein directed to be transferred and conveyed to her children or descendants shall be transferred and conveyed to the children or descendants of his other daughter, and if there be none the same shall be transferred and conveyed to his brothers and sisters and to the children of any deceased brother or sister by right of representation as aforesaid.

The effect of this will was to provide his three children with the income from his estate during their lives, giving the care of the estate to four trustees.

Thus was created what has since been termed the celebrated trust will, and which has so far withstood the attacks of the best lawyers in the State. The will, in addition to restricting the children's enjoyment to the income of the estate, was so worded that the son's issue was not to participate in their father's estate, but upon his death, his third of the income was to cease and determine, and his interest, which he received during his life, was to be divided between his sisters, if living. This trust clause has been the basis for one of the greatest and most persistent legal battles this State has known, the courts alone not being appealed to, but the legislature as well—and in the citation of authorities supporting the different contentions and theories, in addition to the thousand and one modern cases cited, old English law and cases, as far back as the Year Books, were submitted. The trust question involved is of unusual importance, not alone on account of the millions involved in the estate, but on account of the interest of every savings bank

in the State, which has issued a deed of trust, the questions involved here, being directly applicable thereto.

After the appointment of the special administrators and the assigning of the matter to Department No. 10, which was presided over at that time by the Hon. Chas. W. Slack, and as a forerunner of what was to come on the 16th day of January, 1895, Charles L. Fair petitioned the court for an order requiring the production of all instruments in writing purporting to be last wills of James G. Fair, which order was granted, but afterwards was modified to the extent that said executors were ordered to show cause on a certain day why they should not produce such papers. Said order to show cause was heard on the 23d of January, 1895, and denied. A motion for inspection of all wills was thereafter made by said Charles L. Fair and also denied.

On the 28th day of January, 1895, it was discovered that the original will had been stolen from the county clerk's office between the afternoon of Friday, January 25th and the afternoon of Monday, January 28th. Diligent search was made for said lost will, but without success, and the same has never been recovered. No reward has ever been offered for its return. Fortunately, a copy of the will had been preserved, which was afterwards decreed to be a copy of the original and admitted to probate as such.

On the 18th of March, 1895, an instrument entirely written in pencil, and purporting to be the last will of Senator Fair, bearing date September 24, 1894, was filed, together with a petition by Charles L. Fair, Theresa A. Oelrichs and Virginia Fair, for its probate. The sponsor of this will was Nettie R. Craven, a principal in one of the public schools of San Francisco, and the only way wherein it differed materially from the will previously filed was that the objectionable trust clause was eliminated, and it also provided for a legacy of fifty thousand dollars for the Teachers' Pension Fund.

Senator Fair, as stated, died on the 28th day of December, 1894, and the trust will was filed on the 29th day of December, 1894; this pencil will was not filed until the 18th day of March, of the year following. The cause of this delay was explained thus by Mrs. Craven: Senator Fair on the day the will bears date, Sept. 24, 1894, had called upon her at her home, No. 2007 California street, and had then and there, at her dictation and in her presence, and in the presence of a Mrs. Elizabeth Haskins, written his will, in lead pencil, and then had copied the same in ink on two sides of one piece of paper. That he then gave both copies to her for safe keeping, and she had done the ink copy up into a package and sent it to her daughter in New York. That after the Senator's death, she went to New York to get the will and return with it for the purpose of filing it, and did so get it and started back; when at Chicago a man addressed her in the train, stated that he was the man to whom she was to give the package (an understanding having been had to this effect between herself and her friend Mulholland before leaving New York) and that she gave the will to him and from that time on she had not seen

him or the will either. Therefore the pencil copy was called into requisition and filed on the 18th day of March, 1895.

On the 25th of March, 1895, Dr. Marc Levingston, named in said pencil will as executor, petitioned for its probate. As co-executors of this pencil will were James S. Angus and Thos. G. Crothers, who were named in both wills as executors. On the 15th of April written opposition on behalf of Margaret J. Crothers and others was filed to the probate of the pencil will.

At about this time it was deemed advisable by the administrators to dispose of the hundred thousand and odd tons of wheat that Senator Fair had purchased shortly before his death. It was not known to the public by whom this immense amount of wheat was controlled and the difficulty of unloading such a vast quantity upon the market can be readily understood. The amount realized from this sale ran into the millions.

On the 7th of May, 1895, Charles L. Fair filed a contest to the will of September 21, 1894, giving as grounds of contest, undue influence, unsoundness of mind, etc., and thus bringing himself within the forfeiture clause set out in said will. This clause reads as follows:

"Believing that I have made a just and equitable disposition of my estate, considering all the circumstances surrounding each and every of the beneficiaries therein named, I now expressly declare and provide that if any or more of the legatees or devisees in this will named or provided for shall at any time commence any proceeding to contest this will, the legacy, devise and provision therein bequeathed, devised and provided for shall from that time become void, and I hereby revoke the same," etc.

On the 15th of June, 1895, an action was commenced by Charles L. Fair against Trustees Angus, Bresse, Crothers, and Goodfellow, to quiet title to the Lick House property, which under an act of the legislature passed for that purpose, was another way of testing the validity of the trust clause contained in the will of September 21, 1894. This case was decided by Judge Slack in favor of the plaintiff, holding the trust to be invalid, which ruling is the basis of the appeal now pending before the Supreme Court of this State, which decision was, after two hearings before the court in banc, reversed by a four-to-three vote, thus sustaining the trust, and which decision was afterward set aside, and the cause ordered re-argued, which has been done, and now awaits final determination.

On January 2, 1896, a contest of the will of September 21, 1894, was filed on behalf of Dr. Marc Levingston; also on behalf of the "Board of School Teachers' Retirement Fund Commissioners."

On the 16th of March, 1896, Charles L. Fair's contest to the will of September 21, 1894, was withdrawn without prejudice, and on the 7th of April, 1896, he withdrew from the petition to probate the pencil will, and on the same day he filed opposition to the pencil will. This was the culmination of a strange set of circumstances. Of course, it is unnecessary to say that

the trust feature in the will of September 21st was objectionable to the children of Senator Fair, and when the will of September 24th was presented to them by Nettie R. Craven, bearing a later date than the trust will, and without the trust feature, it was grasped at and filed, together with their petition for its probate. As a reason for his will being in the possession of Mrs. Craven, she claimed to be Senator Fair's contract wife, and also claimed to hold deeds to valuable city property made to her by the Senator.

The deeds which Mrs. Craven held and which were afterwards recorded, were for valuable city realty, one deed being for a block of land on the corner of Pine and Sansome streets, upon which is a modern five-story brick building, and the other deed was for a block of land at Mission and Twelfth streets. The value of these two pieces is a million and a half dollars, and the monthly rental thereof five thousand dolars. She claimed that in order to avoid notoriety, Senator Fair had made no provision for her in his will, but had executed these two deeds to her, by way of his provision for her. They were entirely written and signed in pencil, and bore the notarial certificate of a San Francisco notary. Upon the trial of these deeds in an action to quiet title to this property, it was held by Judge Slack that the deeds were simulated, that they were never acknowledged by James G. Fair before the notary, and that they be cancelled of record. H. S. Crocker & Co., of San Francisco, were instrumental in establishing these facts. The notarial certificates attached to the deeds, so they testified, were never printed by them until January 8th, 1896, and inasmuch as the acknowledgment bore date Sept. 8th, 1894, that Fair died at the end of that year, and that the notary resigned his commission as a notary in 1894, it was found that Fair never acknowledged these deeds. The notary was tried for perjury in connection with his testimony given in regard to these deeds, but owing to a defective pleading was acquitted.

The change of base precipitated matters and as a result Mrs. Craven filed her two deeds, which resulted in a suit by the executors and trustees against her to quiet title to the two pieces of property claimed by her, the trial of which occupied the attention of Judge Slack and a jury for six months. The trial was one of the most bitterly contested on record. Out of it arose many charges of perjury and forgery, ending in a finding by the court that the deeds were forgeries.

On the 16th of November, 1896, Dr. Marc Levingston withdrew his petition for the probate of the pencil will and on the same day an order was made by Superior Judge Charles W. Slack denying its probate, and a judgment was signed and filed adjudging that it was not in the handwriting of James G. Fair, and that it was not his last nor other will, and at the same time an order was made admitting the will of Sept. 21, 1894, commonly known as the "trust will," to probate, and appointing James S. Angus, Thomas G. Crothers, and W. S. Goodfellow as executors thereof (the said Louis C. Bresse, who was also nominated as one of the executors thereof, having on the 22nd day of April, 1896, died at Ensenada, Mexico.)

During the course of the special administration of this estate, the special administrators performed some extraordinary services. In addition to the enormous amount of business necessary to the usual handling of an estate of this magnitude, they successfully conducted the sale of the hundred thousand and over tons of wheat; carried on the outlined policy of the Senator in the reclamation and improvement of his North Point property, whereby over fifty square blocks of land have been reclaimed and improved, at an expense of over a million dollars, and carried on at a profit to the estate, the Petaluma Ranch, embracing 8349 acres, the Knight's Landing Ranch, containing 5057 acres, and the Berryessa Ranch, containing 1500 acres.

On the 5th day of April, 1897, a petition was filed by Charles L. Fair, Theresa A. Oelrichs, and Virginia Fair, for distribution to them of all the real estate belonging to the estate. On the hearing of the petition the matter was argued at length before Judge Slack, resulting in a decree awarding all the real estate to the three children, in equal shares, from which decree an appeal was taken by the executors and trustees, and which appeal is undetermined before our Supreme Court. The question involved in this appeal is practically the same as the one involved in the suit to quiet title, in which the trust was held to be invalid by Judge Slack. The two appeals are linked together and are being considered together by the court.

In the proper presentation of these appeals upwards of eight thousand printed pages of briefs have been filed, advancing the theories and contentions of the different sides.

Subsequently a petition was filed by the same parties for distribution to them of the personal property belonging to said estate, but which said petition has not been pressed and still remains.

On November 15, 1897, a year within one day after the will of September 21, 1894, had been admitted to probate, Charles L. Fair filed his petition for revocation of probate of said will, which contest is still pending.

On the 8th day of February, 1898, the inventory and appraisement of the estate was filed, giving the appraised value thereof at $12,228,998.07. This amount has increased since then to about $18,000,000. Notwithstanding the fact that the legacies under the will, amounting in all to upward of nine hundred thousand dollars, have been paid, the corpus of the estate is practically intact. The expense of conducting an estate of this magnitude is very great, and even after the cost of administration and the expenses connected with the mass of litigation with which this estate has been attended, the income is more than sufficient to meet all demands and leave a surplus of about two million dollars.

There have been twelve semi-annual accounts filed by the executors, and these attest the thorough business manner in which the estate is being conducted and the soundness of the policy pursued.

On the 20th day of April, 1898, Nettie R. Craven filed a petition setting

forth her marriage to Senator Fair and praying for an order allowing her the sum of five thousand dollars per month for her support and maintenance, such allowance to date from the day of Mr. Fair's death. This application was bitterly contested both by the executors and by the children of Senator Fair. The matter came on for hearing on the 12th of February, 1900, and occupied the attention of Judge James M. Proutt, of Department 10, of the Superior Court, from that time until the 18th day of May following. This application raised all the old issues once more, and sought to have the judgment of the court on all documents for which Mrs. Craven was sponsor. The whole case was gone into, and the deeds, the marriage contract, the pencil will, the republication letter, and the Grand Opera House note, were all considered and passed upon in the ultimate ruling of the court.

On the trial of this proceeding, in order to support the marriage contract, Mrs. Craven attempted to show a solemnization, she claiming her marriage to Senator Fair was solemnized before a justice of the peace at Saucelito, and in support of this claim introduced an affidavit of one Simpton, a justice of the peace of Saucelito, attesting to such a marriage before him.

As developed upon the trial, however, it appeared that one Adolph Silva, a warm personal friend of Charles L. Fair, had been approached by Mrs. Craven for the purpose of securing a justice of the peace who would testify to having performed the marriage ceremony. Silva, seeing a way to assist his friend, Charles L. Fair, entered into an arrangement with her to secure the justice of the peace, and did arrange a meeting between the justice and Mrs. Craven, and later, a meeting with Mrs. Craven's attorneys, at which time an affidavit of the justice, Simpton, was drawn up and sworn to. But upon the trial both Silva and Simpton swore to the true facts and exposed the whole plot.

In the many proceedings that Mrs. Craven instituted against this estate, and the number of times she was on the witness stand under examination as to her relations with Senator Fair, while she testified repeatedly that she was his contract wife, yet she never once mentioned the fact that there had been a solemnization, until just before the trial on this family allowance application. As a result of the persistence of her efforts to establish herself as the widow of Senator Fair, she now awaits a criminal trial on the charge of perjury. The last act in this drama has been well exploited in the daily newspapers.

The decision of the court on this application for family allowance, was most sweeping, and judicially determined that all documents under consideration were forged and simulated, and that her claim for an allowance was without foundation.

On the hearing of this petition for a family allowance, much expert testimony was introduced and many photographs and enlargements of both the genuine and disputed signatures of Senator Fair were offered and received in evidence.

Mr. George E. Crothers, one of the attorneys for the executors, conceived a most novel and positive way of showing the improbability of the signatures to the disputed writings being those of Fair. There were 1299 checks of James G. Fair, consecutively numbered, introduced in evidence as exemplars of his signature. Purely as a matter of comparison, the number of times the twelve most obvious characteristics of the marriage contract signature are found in the above mentioned 1299 checks, are as follows:

In the marriage contract the letter "J" is formed with two strokes. In all the 1299 checks introduced, this formation of the letter "J" does not occur once.

The letters "J" and "a" are joined in the marriage contract, and it does not so occur in the 1299 checks introduced.

The open "a," as occurs in the word "James," in the marriage contract, occurs but six times in the 1299 checks introduced, and so on through the twelve characteristics of the marriage contract; and as its being possible for all these twelve characteristics to appear in one signature, the probability of their so occurring is figured out by Mr. Crothers as being once in 19,768,073,714,260,245,706,581,686,159,683,246 signatures. This is a most remarkable assertion to make, yet it is claimed to be mathematically correct.

For the purpose of getting the matter into figures, Mr. Crothers had to assume that those characteristics which did not appear at all in the exemplars did appear therein once—that is, in applying the law of chance to the proposition that *all* twelve characteristics of the marriage contract signature did appear in one signature admittedly genuine, he figured upon the assumption (which was contrary to fact) that *each* characteristic that did not appear at all did appear once.

Up to this time, the representations made by Mrs. Craven to the children of Senator Fair and to their attorneys, seemed so plausible, and from the documents shown by her to them, were so conclusive that it is but little wonder that they gave credence to her claims, and, in consequence, afforded her their support. But time threw light into the darkness, and the suspicions of the heirs were aroused as to the genuineness of these various documents, and as the evidence accumulated there was at last apparent a most cleverly laid scheme.

Necessarily under this changed condition of affairs, the children withdrew their support, and filed a contest of the pencil will.

The next move was an application by Mrs. Craven to set aside the decree of partial distribution of the real estate to the children of deceased, which was denied. Then followed an application by Mrs. Craven, under Section 1664 of the Code of Civil Procedure, to determine heirship, upon which a citation was issued commanding all persons having or claiming to have an interest in the estate, to appear and set forth the nature and title of their respective interests. The necessary appearances were made in conformity with the Code, but

as yet the petitioner has not elected to push her petition to a determination. But she further put herself on record in the shape of a petition for distribution of her net share, as surviving wife and widow of James G. Fair, deceased, of the income which has heretofore accrued to the estate. This petition is in a like condition as the former.

This account of the estate thus far administered, covers a period of six years of continuous litigation. The vital questions are still undetermined. In addition to the proceedings above outlined, the executors have instituted as many as sixty-seven suits, of all characters and descriptions, and have defended twenty-six actions brought against them in their capacity as executors. Of these suits nine have been appealed to the Supreme Court of this State, by either one party or the other. There have been four actions in the Federal Courts, and one action has been carried to the United States Supreme Court. Thus will be seen the difficulties that beset the administration of a large estate.

The attorneys who have been engaged by one side or another of this interesting and protracted contest, represent the leading lawyers of the State. A list of them, with the interests for which they stand, will not be amiss.

James S. Angus and Thomas G. Crothers, as executors and trustees, are represented by William M. Pierson, Esquire, and George E. Crothers, Esquire.

The other executor and trustee, W. S. Goodfellow, is represented by Garret W. McEnerney, Esquire, with Hon. Robert Y. Hayne as counsel.

The daughters, Theresa A. Oelrichs and Virginia Vanderbilt, are represented by Messrs. Lloyd & Wood, Wilson & Wilson, and Bishop & Wheeler with Judge Garber, Wm. F. Herrin and E. S. Pillsbury of counsel.

The son, Charles L. Fair, is represented by Knight & Heggerty, and Hon. Jas. H. Budd, with Bishop & Wheeler, of counsel.

Hon. Van R. Paterson represents the various legatees and devisees.

Nettie R. Craven has, at different stages of the drama, been represented by the following counsel: Hon. D. M. Delmas; Delmas & Shortridge; Denson, Oatman & Denson; Gen. John H. Dickinson; Abe. Reuf; Judge Curtis of New York, and Pence & Pence.

——*THE EDITOR.*

THE STATE SUPREME COURT
from its
ORGANIZATION

The STATE SUPREME COURT

The following record is from the California Blue Book, or State Roster, for 1895, and is supplemented to 1901:

The orignal constitution of California, adopted in 1849, provided for a Supreme Court, to consist of a Chief Justice and two Associate Justices. It further provided, in Section 3, of Article VI: "The Justices of the Supreme Court shall be elected at the general election by the qualified electors of the State, and shall hold their office for a term of six years from the first day of January next after the election; provided, that the legislature shall, at its first meting, elect a Chief Justice and two Associate Justices of the Supreme Court, by joint vote of both houses, and so classify them that one shall go out of office every two years. After the first election the senior Justice in commission shall be the Chief Justice."

The first legislature, on February 14, 1850, passed an act to organize the Court. In that Act it was provided that one Justice should be elected in 1851, one at each general election every second year thereafter, and that the Governor should fill vacancies by commission, which should expire at the subsequent general election, when the vacancy should be filled by an election for the remainder of the unexpired term. On the 28th an Act was passed authorizing the clerk of the Supreme Court to rent a suitable room in San Francisco for the March term, 1850, provided that the rent of such room should not exceed $1,000 per month. On March 5th the legislature fixed the salary of each Justice at $10,000 per annum. On April 13th an Act was passed providing for certain special terms in San Francisco, and that afterwards the sessions of the court should be held at the seat of government.

In accordance with the provisions of the constitution above quoted, the first legislature, on December 22, 1849, elected S. C. Hastings Chief Justice, Henry A. Lyons first Associate Justice, and Nathaniel Bennett second Associate Justice. On February 1, 1850, the legislature passed a resolution classifying the Justices so that Hastings should go out of office

at the end of two years from January 1, 1850, Lyons at the end of four years, and Bennett at the end of six years from that date. On March 11, 1851, a law was passed to have one Justice elected in 1852, and one at the general election every second year thereafter; but on April 28th, another Act was passed providing for the election of one in 1851, and one every second year thereafter. This legislature also passed a law providing that the terms of court, until January 1, 1852, should be held in San Francisco, and after that at the seat of government. On May 24th, an Act was passed providing that thereafter the sessions of the court should be held at the capital of the State. The salaries of the Justices were reduced to $6,000 each on April 21, 1856.

Justice Hastings served out his term, and at the general election held September 3, 1851, Solomon Heydenfeldt was elected to succeed him. Heydenfeldt took office January 1, 1852, and resigned January 6, 1857. Governor Johnson, on the 13th, appointed Peter H. Burnett to fill the vacancy, and Burnett resigned October 12, 1857. On the 13th Governor Johnson appointed Stephen J. Field to serve out the unexpired term. Field had been elected on September 2, 1857, for the full term. This term began on January 1, 1858. In 1863, President Lincoln appointed Field one of the Associate Justices of the Supreme Court of the United States, and on May 20th of that year he resigned his seat on the California bench. The next Governor, Stanford, appointed E. B. Crocker to fill the vacancy, and he served until the taking effect of the constitutional amendments of 1862.

Justice Lyons resigned March 31, 1852, and on April 2d, Governor Bigler appointed Alexander Anderson to fill the vacancy, and he qualified on the 6th. At the general election on November 2, 1852, Alexander Wells was elected for this short term, and he took his seat on the bench January 3, 1853. Wells was re-elected for the full term, September 7, 1853, and he assumed office by virtue of that election January 4, 1854. He died October 31, 1854, and on November 24th, Governor Bigler appointed Charles H. Bryan to fill the vacancy. At the general election held September 5, 1855, David S. Terry was elected by the people, and he assumed office on November 15th. Terry resigned September 12, 1859, to participate in the duel with Senator David C. Broderick. On the 20th Governor Weller appointed W. W. Cope to fill the Terry vacancy. Cope had been elected for the full term at the election held on September 7, 1859, and he took office under that election on January 2d following, and served until the remodeling of the court in 1864.

Justice Bennett resigned October 3, 1851, and on the 11th Governor McDougall appointed Hugh C. Murray to fill the vacancy. On November 2, 1852, Murray was elected to succeed himself, and he took office by virtue of that election on January 3d following. Murray was elected for the full term on September 5, 1855, but he died September 18, 1857, and Governor

Johnson appointed Peter H. Burnett on October 12th to succeed him. At the general election on September 1, 1858, Joseph G. Baldwin was elected to fill the remainder of the vacancy, and he assumed office on October 2, 1858. On September 4, 1861, Edward Norton was elected for the full term. Norton took office on January 6th following, and served until the change was effected by the adoption of the constitutional amendments of 1862.

In 1862 the State constitution was amended to constitute the Supreme Court of a Chief Justice and four Associate Justices, and it provided that the Justices should be elected at special elections, to be provided for by law, at which elections only judicial and school officers should be elected. It provided further: "The first election for Justices of the Supreme Court shall be held in the year 1863. The Justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting, shall so clasify themselves, by lot, that one Justice shall go out of office every two years. The Justice having the shortest term to serve shall be Chief Justice."

On March 21, 1863, the legislature passed an Act providing that there should be held on the third Wednesday in October, 1863, and every two years thereafter, an election, to be called "Special Judicial Election," at which should be elected the Supreme Justices and other judicial and school officers. On April 20th an Act was passed to provide for the organization of the new court, and it was enacted that when a vacancy should occur, the Governor should fill it by the appointment of a person, who should hold until the next judicial election, and the Justice elected by the people at such election should hold office for the balance of the unexpired term. It was also provided that the terms of court should be held at the seat of government. The salaries of the Justices were fixed at $6,000 each. The salaries have not since been changed.

Under this constitutional provision, on October 21, 1863, Oscar L. Shafter, Lorenzo Sawyer, Silas W. Sanderson, John Currey, and A. L. Rhodes were elected Supreme Court Justices. The new court organized January 2, 1864, and in accordance with law the Judges drew lots to determine the tenure of their official terms, with the following result: Shafter drew for ten years, Rhodes for eight, Sawyer for six, Currey for four, and Sanderson for two.

Justice Sanderson was re-elected to succeed himself on October 18, 1865. Sanderson resigned January 4, 1870. On the 8th Governor Haight appointed Jackson Temple to fill the vacancy, and he assumed the duties of the office on the 10th. On October 18, 1871, Addison C. Niles was elected Justice to fill the vacancy. He took office January 1st following, and remained on the bench until the new constitution took effect.

Royal T. Sprague was elected to succeed Currey on October 16, 1867, and took office January 6, 1868, but died February 24, 1872, and on the 4th of March Governor Booth appointed Isaac S. Belcher to fill the vacancy. On October 15, 1873, Elisha W. McKinstry was elected to the office. McKin-

stry took office January 12, 1874, and served until the reorganization of the court under the new constitution.

On October 20, 1869, William T. Wallace was elected to succeed Sawyer. Wallace assumed office on January 10, 1870, and served until the new constitution effected a change in the court.

On October 18, 1871, Rhodes was elected to succeed himself, and he served until the new court came in.

Justice Shafter resigned December 11, 1867, and Governor Haight appointed J. B. Crockett to succeed him. On October 20, 1869, Crockett was elected to succeed himself, and he served until the change was effected by the new constitution.

In 1879 the people adopted the new constitution, which constituted the Supreme Court of a Chief Justice and six Associate Justices, and it provided: "The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State-at-large, at the general State elections, at the time and places at which State officers are elected, and the term of office shall be twelve years from and after the first Monday after the first day of January the next succeeding their election; provided, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them, shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this constitution."

At the election held on September 3, 1879, Robert F. Morrison was elected Chief Justice. At the same time Samuel Bell McKee, Erskine M. Ross, John R. Sharpstein, J. D. Thornton, E. W. McKinstry, and M. H. Myrick were elected Associate Justices. The new court organized January 5, 1880, and on the classification by lot, Ross and Sharpstein drew for four years, McKee and Myrick for eight years, and Thornton and McKinstry for twelve years.

On November 7, 1882, Sharpstein and Ross were elected to succeed themselves. They assumed office, by virtue of this election, January 1, 1883, as by the provisions of Section 10 of the schedule to the new constitution, the term of all officers elected at the first election under it were made one year shorter than the terms fixed by law or by the constitution.

Judge Ross sent his resignation to the Governor on October 1, 1886, and at the election on November 2, following, Jackson Temple was chosen to succeed him.

At the same election Van R. Patterson and Thomas B. McFarland were elected Associate Justices to succeed McKee and Myrick.

Chief Justice Morrison died March 2, 1887, and Niles Searls was appointed by Governor Bartlett to serve until the next election, November 6, 1888. At that election W. H. Beatty was chosen Chief Justice to fill out the unexpired term.

Judge McKinstry resigned July 30, 1888, to take effect October 1, 1888, and on September 22d, of that year, Governor Waterman appointed John D. Works to fill the vacancy, and at the election held on November 6, 1888, Works was chosen to succeed himself.

On June 25, 1889, Temple resigned, and Governor Waterman appointed C. N. Fox, of Alameda, to fill the unexpired term.

At the general election in 1890, W. H. Beatty was elected for the full term of twelve years to succeed himself, and Ralph C. Harrison and C. H. Garoutte, Associate Justices for twelve years, to succeed John D. Works and John D. Thornton, and J. J. DeHaven for the short term of four years, to succeed Charles N. Fox.

Governor Markham, February 2, 1893, appointed W. F. Fitzgerald, of Los Angeles, to fill the unexpired term of Sharpstein, deceased.

On April 28, 1894, William C. Van Fleet was appointed by Governor Markham to fill the vacancy caused by the resignation of Van R. Paterson, until the next general election.

At the general election in 1894, F. W. Henshaw and Jackson Temple were elected Associate Justices for twelve years to succeed J. J. DeHaven and W. F. Fitzgerald, and William C. Van Fleet for the short term of four years to succeed Van R. Paterson, resigned.

At the general election in November, 1898, Thomas B. McFarland and Walter Van Dyke were elected Associate Justices, to succeed the first named and William C. Van Fleet, and entered on their terms of twelve years each, in January, 1899.

The following is a list of persons who have served as Chief Justices, together with the terms of service:

S. C. Hastings, from December 22, 1849, to January 1, 1852.
Henry A. Lyons, January 1, 1852, to March 31, 1852.
Hugh C. Murray, March 31, 1852, to September 18, 1857.
David S. Terry, September 18, 1857, to September 12, 1859.
Stephen J. Field, September 12, 1859, to May 20, 1863.
W. W. Cope, May 20, 1863, to January 2, 1864.
Silas W. Sanderson, January 2, 1864, to January 1, 1866.
John Currey, January 1, 1866, to January 1, 1868.
Lorenzo Sawyer, January 1, 1868, to January 1, 1870.
A. L. Rhodes, January 1, 1870, to January 1, 1872.
Royal T. Sprague, January 1, 1872, to February 24, 1872.
William T. Wallace, February 24, 1872, to January 1, 1880.

Robert F. Morrison, January 1, 1880, to March 2, 1887.

Niles Searls, appointed by Governor Bartlett, April 19, 1887.

William H. Beatty, elected by the people November 6, 1888; re-elected November 4, 1890.

Dates and places of death of Supreme Court Justices:

H. A. Lyons died at San Francisco, July 27, 1872.

N. Bennett at San Francisco, April 20, 1886.

H. C. Murray at Sacramento, September 18, 1857.

A. Wells at San Jose, October 31, 1854.

C. H. Bryan at Carson City, Nevada, May 14, 1887.

J. G. Baldwin at San Francisco, September 29, 1864.

E. Norton at London, May 12, 1872.

E. B. Crocker at Sacramento, June 24, 1875.

O. L. Shafter at Florence, Italy, January 22, 1873.

S. W. Sanderson at San Francisco, June 24, 1886.

R. T. Sprague at Sacramento, February 24, 1872.

J. B. Crockett at Fruitvale, January 15, 1884.

R. F. Morrison at San Francisco, March 2, 1887.

S. B. McKee at Oakland, March 2, 1887.

D. S. Terry was shot by David Neagle at Lathrop, August 14, 1889.

S. Heydenfeldt at San Francisco, September 15, 1890.

A. C. Niles at San Francisco, January 17, 1890.

J. R. Sharpstein at San Francisco, December 28, 1892.

S. C. Hastings at San Francisco, February 19, 1893.

P. H. Burnett at San Francisco, May 17, 1895.

Lorenzo Sawyer at San Francisco, September 7, 1891.

Isaac S. Belcher at San Francisco, 1898.

ATTORNEY GENERALS OF CALIFORNIA

Engd. by Williams, New York

H. H. McCullough

ATTORNEY GENERALS of CALIFORNIA

E. J. C. Kewan was elected by the legislature on December 22, 1849, and took office the same day. He resigned August 13, 1850. The State was not admitted until a month later. He died at Los Angeles, November 25, 1879.

James A. McDougall, elected October 7, 1850; resigned December 30, 1851. He died at Albany, New York, September 3, 1867.

Alexander Wells, appointed by Governor McDougal, January 6, 1852. He died at San Jose, October 31, 1854.

S. C. Hastings, elected September 3, 1851; took office January 5, 1852. Died in San Francisco, February 19, 1893.

John R. McConnell, elected September 7, 1853; took office January 2, 1854. He died at Denver, August 18, 1879.

William M. Stewart, appointed by Governor Bigler June 7, 1854, to fill the office during the temporary absence of McConnell from the State by legislative consent.

William T. Wallace, elected September 5, 1855; took office January 7, 1856.

Thomas H. Williams, elected September 2, 1857; took office January 4, 1858; re-elected September 7, 1859; took office January 2, 1860. He died at San Francisco, February 28, 1886.

Frank M. Pixley, elected September 4, 1861; took office January 6, 1862. Died at San Francisco, August, 1895.

J. G. McCullough, elected September, 1863; took office December 5, 1863.

Jo Hamilton, elected September 4, 1867; took office December 7, 1867.

John Lord Love, elected September 6, 1871; took office December 2, 1871. Died at San Francisco, on July 5, 1899.

Jo Hamilton, elected September 1, 1875; took office December 4, 1875.

Augustus L. Hart, elected September 3, 1879; took office January 5, 1880.

E. C. Marshall, elected November 7, 1882; took office January 1, 1883. Died at San Francisco, July 9, 1893.

G. A. Johnson, elected November 2, 1886; took office January 3, 1887. Died at San Francisco, September 20, 1894.

William H. H. Hart, elected November 4, 1890; took office January 5, 1891.

William F. Fitzgerald, elected November 6, 1894; took office January 7, 1895.

Tirey L. Ford, elected November, 1898; took office January, 1899.

OUR FIRST WATER RIGHTS DECISION

BY THE EDITOR

OUR FIRST WATER-RIGHTS DECISION

Mr. D. G. Reid, of the leading law firm of Reid & Bartlett, having offices at Redding, Shasta county, and Weaverville, Trinity county, writing from the first place named, brings to our notice the case of Davis vs. Ware, decided by Hon. Joseph W. McCorkle, Judge of the Ninth Judicial District Court, for Trinity county, April 21st, 1854. Mr. Reid says:

"I have looked up the Supreme Court decisions and I find that the first case in the California Reports on this question is reported in the fifth volume at page 140,—the case of Mathew W. Irwin vs. Robert Phillips, et al., decided by the Supreme Court in January, 1855. I find that the decision of the lower Court, Tenth Judicial District, for Nevada County, was rendered and decided November 28, 1854. You can see from the above that the enclosed decision was rendered more than seven months prior to the case of Irwin vs. Phillips, and I am satisfied is the first decision in the State which *goes outside of the Common Law doctrine.*"

Judge McCorkle's decision is as follows:

"This action is brought for damages. The complaint states that plaintiffs have constructed a race or canal for the purpose of conducting the waters of West Weaver Creek to certain mining claims which they were in possession of and working, known as Davis & Co.'s race, and that defendant had by constructing a dam, diverted the waters of West Weaver Creek to other diggings, contrary to the usages and customs of the miners on West Weaver.

"The answer set out that the dam by which the waters of West Weaver were diverted was constructed in the year 1851, for the purpose of conducting the waters of said creek to the mines in the vicinity of Weaverville; that the race of defendants was commenced in the year 1850 and completed in the spring of 1851, and was in fact completed and in operation for the purpose of mining one year before the plaintiff began to construct the race known as Davis & Co.'s, far below that of defendant; that the waters of West Weaver so diverted was for mining purposes, etc., according to the usages and regulations of miners in the county of Trinity, etc.; that plaintiffs according to the

regulations of the miners, were only entitled to four "Tom Heads" of water, for the purpose of working the bed of West Weaver Creek as ascertained and settled by a meeting of miners held at Weaverville on the 7th of June, 1853, regularly called and attended by the miners of West Weaver Creek, and at which the following regulations were made: 'Resolved, that the aforesaid race companies (meaning those in the vicinity of Weaverville), be entitled according to their priority of right to so much of the water of West Weaver Creek as their respective races convey: provided always, that sufficient water be allowed to run in the natural channel of said creek for the benefit of miners at present working or who may hereafter work the bed of said creek, and that four "Tom Heads" shall be sufficient for that purpose;" that at the same meeting a further regulation was made to the effect that any individual or company who may construct a race for the conveyance of the water of any gulch or creek in this district shall be protected in the right to said water, provided it is used for mining purposes. It is also stated in the answer that defendants, in compliance with the above regulations, permitted four Tom Heads of water to run in the natural channel of West Weaver Creek, for the purpose of supplying the miners thereof with water, etc. To the answer a demurrer is filed admitting all the facts set out as true, and claiming that they do not constitute a legal or sufficient defense.

"The question and rights involved in this case are of great importance to the mining population of this as well as the other mining counties of this State, and upon their equitable and fair adjustment depends not only the quiet and peace of the community, but to a great extent the prosperity and success of the miners and the full development of the vast mineral resources of the county.

"This court cannot but perceive the inapplicability of the doctrine of the common law to the state of things presented. West Weaver Creek flows through and drains lands that are strictly and exclusively mineral, and the only business and occupation of the mass of people in its vicinity is mining for gold. Water is an indispensable and necessary element for mining operations, and the application of the doctrines of the common law in regard to water courses, as established and applied to agricultural and manufacturing counties, to our mineral regions, would not only not tend to foster and protect the mining interest, but absolutely retard and in course of time destroy it. The beds of most of the creeks and streams in the mineral regions have been worked out, while extensive gold fields lie unoccupied and untouched yet, for want of water, but which by the construction of canals for the conducting of water on and through them, will yield good wages to the miners for years to come, and furnish thousands with constant employment, who otherwise would be compelled to lay idle, except during the rainy season. The statutes of the State have, however, to some extent, relieved this court from the responsibility of making a decision in the case, which, while it would protect the

interests of the great mass of the miners of this vicinity, would at the same time be in direct conflict with the doctrines of the common law. The "usages and regulations" of the miners are legalized by the law-making power and adopted, and made as much a part of the law of the State, when not in conflict with the constitution and statutes, as the common law itself, and should be enforced by the courts as such. With this view of the state of the case and the law, the question involved can easily be determined. The 'regulations' of the miners in the district and vicinity, as set out in the defendant's answer, give to the defendants the right to use all the water of West Weaver Creek, except four 'Tom Heads,' for mining purposes, conducted through his race—four 'Tom Heads' being deemed a sufficient quantity for working the bed of the creek below the dam of the defendant. In all respects, it is admitted, the defendant has complied with the 'regulations' as made by the miners at a regularly called meeting for the purpose, which the plaintiffs themselves attended. The decision of the court therefore is that the demurrer be overruled and judgment be rendered for the defendant."

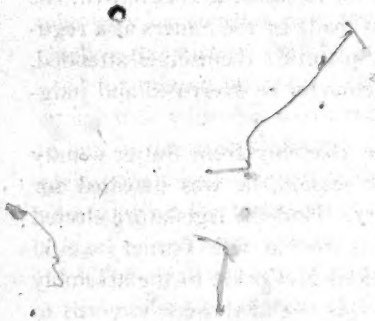
Judge McCorkle had been a member of the assembly from Sutter county in 1851. A year prior, at the first legislative session, he was defeated for Judge of the Eighth District by Wm. R. Turner. Had the legislature elected him, a lively chapter in Judge Field's career (his trouble with Turner) would be unwritten. It was Judge Field who introduced McCorkle to the assembly when he took his seat in that body. McCorkle was one of those who voted to impeach Judge Levi Parsons, of San Francisco. In September, 1851, McCorkle was elected to the lower house of congress, and served to March 4, 1853. In the following fall he was chosen District Judge of the Ninth District, embracing Butte, Trinity, and other counties. When the Democratic party divided in 1859, he acted with the Douglas wing. We met him then for the first time, in State convention at Sacramento.

McCorkle, before he went on the bench, fought a duel with United States Senator William M. Gwin. The parties were in "dead earnest," but were not "dead shots." They fought with rifles, with their backs turned at first, and wheeling as the word was given and firing at once. The following paper, signed by all the seconds, shows what occurred:

"After an exchange of three ineffectual shots between the Hon. William M. Gwin and Hon. J. W. McCorkle, the friends of the respective parties, having discovered that their principals were fighting under a misapprehension of facts, mutually explained to their respective principals in what the misapprehension consisted, whereupon Dr. Gwin promptly denied the cause of provocation referred to in Mr. McCorkle's letter of the 29th of May, and Mr. McCorkle withdrew his offensive language uttered on the race-course, and expressed regret at having used it. (Signed) S. W. Inge, F. Stuart, E. C. Marshall, E. C. Fitzhugh, Geo. P. Johnston, A. P. Crittenden. June 1, 1853."

Judge McCorkle died in Maryland, March 30, 1884.

—*THE EDITOR.*



THE REMARKABLE CONTEMPT CASE OF PHILOSOPHER PICKETT

BY THE EDITOR

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Charles E. Pickett was in some respects a remarkable man. Of a temperament not favorable to friendship, he yet made very few real enemies. He was a little above the average height and weight, with nothing about him to attract special attention, but few men have ever been so well known over the whole coast. "There goes Philosopher Pickett!" Our attention was in this way directed to the man for the first time as he walked by us in Sacramento in 1855, with a somewhat peculiar gait and apparently in serious meditation; for although it may not be said that he had a thoughtful face, he was (in his way) a great thinker. With what is termed a "fair" education, and being a constant talker and writer, his expression was commonplace, although not faulty; and as to "philosophy," he was never accredited with having any of the genuine article. He always evinced a deep interest in public men and measures. These were the theme of his tongue and pen. His habitat was in the centers of population. He always carried an unfailing supply of fun, in the form of anecdotes and reminiscences, and this tended to make him companionable in spite of his abrupt dogmatism.

A certain young man of San Francisco, before his admission to the bar, in speaking to us of a vagrant, was unable to recall the exact statutory words, "having no visible means of support," and said that the man had an "invisible means of support." Pickett had "an invisible means of support." The affairs and fate of political parties, states and empires were of pressing concern to him, and he always felt himself competent to discourse of them. He could not be accused of idleness. His friends (or critics) who had dubbed him "philosopher," called his papers "pronunciamentos." For some of these, it may be for most of them in the earliest days, he got some pay from newspapers, but adversity soon came, and abided with him. He kept up appearances quite creditably. We were in the sanctum of the San Francisco *Examiner* in 1870, sitting close to Colonel B. F. Washington, the editor-in-chief, and Geo. P. Johnston, the exchange editor and part owner, when Pickett entered, holding one of his long manuscripts in his hand. (Washington and Johnston were interesting men. For the duels in which they took part, see other pages of this

History.) Laying his paper on the editor's table, Pickett said: "I haven't put any heading on this, Washington; please read it, and give it a proper caption." Johnston, always instantaneous, said, "Washington, call it 'The Ravings of a Maniac.'" Pickett went right out, saying nothing, but showing he was hurt.

It was long before this, in June, 1858, that Pickett wrote a dissertation on "The Birth, Character and Mission of Christ." He designed it for a lecture, and to save the expense of a hall he waited on the pastors and trustees of the principal churches, and asked for the use of their auditoriums, but all turned him away. He was living at San Francisco at the presidential election of 1860, and voted for Lincoln, writing on his ballot (there was no law against it then) that he knew there was to be war between the North and the South, and he wanted to see it come quick and be over. He thought Lincoln's election would precipitate it.

Pickett was born in Virginia in 1820. He turned his eyes to this far-off shore nearly a decade before the first gold seekers rushed in upon Marshall's great find. He went overland to Oregon, with a company composed principally of farmers, and took two years to make the trip. In their new home, every man was required to build a house, or help the community by other hard work—if in no other way, than by hunting and bringing in game. Pickett would neither build, hunt, nor fish. His industry took the form of writing "pronunciamentos" in an almost unbroken wilderness. The "philosophy" which he submitted for the government of the settlement was inscribed (in the dearth of paper) on shingles, which product of honest toil he so smoothed as to make them take the ink, and these he tacked to trees and posts in the most frequent places. His stay in Oregon was brief. He had been in the Rocky Mountains in 1842. In 1846 he was on the banks of the Klamath river, making slow progress towards Central California. Not long afterwards he located at Sutter's Fort, within whose walls he engaged in trading. Here he killed a man in a quarrel and, being tried for the offense, was acquitted.

This historic structure, now rehabilitated by the munificence of Colonel Charles F. Crocker, shows Pickett's old sign indicating his business as a dealer in miners' supplies, along with those of Samuel Brannan, Samuel J. Hensley, Pierson B. Reading, Jacob R. Snyder, and other remembered pioneers.

A few years were passed here, and our errant philosopher took up his residence in San Francisco. The directory of that city in 1856 had something to say of all men in any way notable, and this is what it said of Pickett: "Boards at Rassett House. An early emigrant to Oregon, and hastened to California at the commencement of the Mexican War, and was more or less a participator in the stirring events of that period."

In the metropolis, Pickett, who was never married, called himself a jour-

nalist usually, but he was proud of his pseudonym, and when the first registration law took effect, by which voters were required to give, among other things, their occupation, he himself enrolled as a "philosopher." He was never a lawyer, but usually he made his headquarters at the office of some lawyer friend; for instance, in the late sixties his office was with Williams & Thornton, and in the late seventies, it was with John B. Harmon.

Such was the man who was the central figure in the greatest contempt case known to our State courts.

In 1871, the Supreme Court referred the question of their terms of office to Joseph P. Hoge, Samuel M. Wilson, and Samuel H. Dwinelle; the first two named being at the head of the bar, and the last being at the time District Judge of the Fifteenth District. They all held that there was no such thing as a short term so far as an election by the people was concerned; that, when the Governor appointed a person to fill a vacancy such person held until the next election, but that whenever there was an election by the people the person elected took the office for a full term.

Neither the profession nor the public ever accepted this view. Pickett, instead of treating it as a philosopher, brooded over it as a great wrong. The constitution said: "The justice having the shortest term to serve shall be the chief justice." If all elected justices held for full terms, it would occur now and then that there would not be any justice whose term was shortest; but there would be two justices with terms equally "short."

The constitution as amended in 1862, was substantially the same as before, so far as it related to this question. The custom in vogue prior to 1862 of electing Supreme Judges for long and short terms, was sanctioned by the court itself. There was always one justice whose term was shorter than that of any other.

At the judicial election of October, 1873, when Hon. E. W. McKinstry was elected to the Supreme Bench, as an independent, Hon. Samuel B. McKee was the Democratic candidate, and no other than Hon. Samuel H. Dwinelle himself ran on the Republican ticket for the long term. The Republicans nominated for both a long and a short term, Judge Brunson being the short term nominee. In accepting a place on his party ticket, Judge Dwinelle tacitly revoked his part in the written opinion of two years before. This was nearly a year before Pickett's transgression.

Six years later the second and present constitution of the State put the question to rest in these words: "If vacancy occur in the office of a justice, the Governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term."

When the court referred the question, that tribunal was composed of A. L. Rhodes, Royal T. Sprague, Addison C. Nelson, William T. Wallace, and

Joseph B. Crockett. The opinion of Messrs. Hoge, Wilson and Dwinelle affected the terms of Niles, Republican, and Crockett, Democrat. By all previous rule, Judge Niles' term would end on January 1, 1876. He had been elected to succeed Sanderson, who had resigned six years before at the end of his term. Judge Crockett's term would expire on January 1, 1874. He had first been *appointed* in place of Shafter, who resigned December 11, 1867, leaving six years unserved. Mr. Crockett served until the next election (1869) when he was chosen by the people to serve out the remainder of Shafter's term. But both of these justices, under the opinion accepted by the court, continued on the bench until the opening of the year 1880.

Not to follow Pickett through all the suffering this situation caused him, but to hasten to the issue we recall that he remarked to his friend, ex-Chief Justice John Currey, in the summer of 1874, that he, Pickett, intended to do what will be shown below. Judge Currey said to him, "If you do, you will get into jail or a lunatic asylum."

In the same year, the legislature being in session, Pickett managed to secure the reading of a petition (his own) in the assembly, asking for the impeachment of the Supreme Judges. The document was ruled out by the speaker, M. M. Estee, on March 16, 1874. (Journal of Twentieth Session, page 923). He also secured the introduction into that body of a resolution instructing the judiciary committee to ascertain and report whether or not Justice Crockett was the usurper of a seat on the Supreme Bench. No action was had upon it.

We will now give the famous "contempt" of Pickett, as it was observed by a reporter of the San Francisco *Bulletin*, on August 6, 1874. He described it under the caption of "A Scene in the Supreme Court," as follows:

"At the opening of the Supreme Court of the State of California, about 11 o'clock this morning, an event—unusual for tribunals of that high character—transpired, in which one Charles E. Pickett, well known about the streets, figured disgracefully. A few minutes prior to the hour mentioned above, Pickett took his position at the bar and among the lawyers, having some time previously announced his intention of appearing in the Supreme Court this morning and making a motion before that learned body. The Justices of the Supreme Court are in the habit of entering the court-room at 11 o'clock a. m., and on this occasion the only rule observed is for the court, before taking their seats, to stand erect, the bar at the same time rising to their feet in front of the bench. The bailiff then announces: "The Supreme Court of the State of California," and immediately the members of the bar incline the head in a respectful bow. The court return the salute and afterward take their seats, and the members of the bar follow the example. There are two doors opening into the court-room from the law library, by which the Justices enter.

"When the doors were opened this morning, Chief Justice Wallace entered first, closely followed by Mr. Justice Crockett and Mr. Justice Niles, by the door on the right, while Mr. Justice McKinstry entered by the door on the

left. While the Justices were in the act of arranging themselves, previous to being seated, and just at the moment that the bailiff announced "the Supreme Court of the Sate of California," Pickett suddenly advanced from his position among the lawyers, and, stepping quickly in front of Mr. Justice Crockett, deliberately took the seat assigned to that Justice. Chief Justice Wallace immediately called out, "Where is the bailiff of this court? Who is this man that intrudes himself?" The bailiff, failing to appear, the Chief Justice put his hand on Pickett, as though to give him an earnest hint to vacate the seat, when the latter clenched the Judge, threw his left arm around him, and showed a determination to have a fight. The greatest confusion ensued. The situation was novel beyond conception, and equally aggravating to all save the author of the mischief. But Grant Taggart, the clerk of the court, and the chief, sprang forward and seized Pickett. The Chief Justice then ordered Pickett to be put into the street, and at the same time said, "This man is guilty of contempt of court. We fine him $500 and order him to prison for five days and until the fine is paid." Pickett struggled violently to release himself from the clerk and crier, but was unable to secure the desired end. He was promptly ejected from the court-room and the door was closed."

As Pickett was being thrust through the door into the corridor, he turned and cried out, "I defy you," and the Chief Justice said, "We fine you $500 more." The following is the order of the court entered on the same day:

In the Supreme Court of the State of California, Thursday, August 6, 1874.

Court met at eleven o'clock, pursuant to adjournment. Present, Hon. W. T. Wallace, C. J.; J. B. Crockett, J.; A. C. Niles, J.; E. W. McKinstry, J.; Grant I. Taggart, Clerk; Thomas F. O'Connor, Bailiff.

The court having met pursuant to adjournment, the Judges proceeded to their respective seats upon the bench. Chas. E. Pickett, being then present in the court-room, suddenly obtruded himself upon the bench and into the chair of Crockett, J., and announced that he had as good a right upon the bench of said Court as the said Crockett had; and the said Pickett thereupon being commanded by the Chief Justice to leave the said chair, peremptorily refused to do so, and was subsequently removed therefrom by actual force.

Whereupon it is now here by the Court adjudged that the said Chas. E. Pickett is guilty of a contempt of this Court, committed in its immediate presence, by unlawfully interfering with its proceedings in manner aforesaid, and by disorderly, contemptuous and insolent behavior towards the Court and the Judges thereof then present as aforesaid, (and) it is now here ordered and adjudged by the Court, that for such, his contempt aforesaid, he, the said Chas. E. Pickett, shall suffer imprisonment by close confinement in the common jail of the city and county of San Francisco for the period of five days, and further, that he pay a fine of five hundred dollars, and that if the said fine be not paid at the expiration of said five days' imprisonment then it is further ordered, adjudged and decreed that the said Chas. E. Pickett be imprisoned and kept in close confinement in said common jail until the said fine be paid, provided that such imprisonment for the non-payment of the said fine may extend to, but shall not exceed, one day for every two dollars of the fine due from him, the said Chas. E. Pickett, and that a warrant and writ of execution do forthwith issue, directed to the sheriff of the city and county of San Francisco, commanding him to carry the aforesaid judgment into effect.

> And the said Chas. E. Pickett being still present, and having been adjudged guilty of the contempt of the Court aforesaid, in manner and form aforesaid, and the judgment of the Court in that behalf having been then and there announced in open Court, he, the said Chas. E. Pickett, then and there insolently and contemptuously used and addressed to the Court then and there being in open session, the following language in reference to the said judgment, to-wit, "I defy your authority."

Then followed a second like sentence for five days' imprisonment and a like fine, concluding with the words: "The imprisonment for the contempt last aforesaid to commence at the expiration of the imprisonment for the contempt adjudged firstly aforesaid."

When taken to the county jail, Pickett asked to be given a "room" by himself. He was told that he must take his chances like others. After a while he was allowed separate quarters and the privilege of promenading along the passages and sitting in the office. He was in prison fourteen months. There was much popular sympathy for him. Lawyers found in his case an interesting and prolific subject of discussion. He had been in jail over six months, when ex-Supreme Judge Silas W. Sanderson remarked to a former brother justice of that bench, "They ought to let him out; the people are becoming restive about his case." Hon. James D. Thornton, afterwards a Supreme Judge, made intercession for him without avail. He was finally released on motion of James A. Johnson. Mr. Johnson, since deceased, was a lawyer of advanced age, and a veteran Democratic politician. Formerly living at Downieville, he represented his county in the assembly, and was in the lower house of congress for two terms. After removing to San Francisco, he was elected Lieutenant Governor, serving from December, 1875, to January, 1880. He owed his political successes to his kind impulses and his loyalty to his friends.

Pickett often described the "Supreme Bench scene" in a very dramatic way. He enjoyed telling it, and it was capital entertainment for the listener. He would not, however, "let the matter drop."

Pickett brought suit in the Twenty-third District Court, San Francisco (James D. Thornton, Judge), against Supreme Judges Wallace, Niles, Crockett, and McKinstry, to recover damages in the sum of one hundred thousand dollars, for false imprisonment. His complaint was demurred to as being insufficient, etc., and Judge Thornton sustained the demurrer. Pickett, declining to amend, appealed.

A motion was made to dismiss the appeal, for a failure to file the transcript within the time prescribed. Notice of this motion was given on the 16th of May, 1879.

Pickett took plenty of more time, and filed his transcript on the 24th of December following. The defendant Judges (except McKinstry, who was re-elected) went out of office a few days later.

The matter was heard in January, 1880, before a full court—Chief Justice Morrison, and Justices McKee, McKinstry, Myrick, Ross, Sharpstein, and

Thornton. These were all new men (except McKinstry) elected under the new constitution, and Judge Thornton had been the District Judge who sustained the demurrer to Pickett's complaint.

The court held that the four ex-Supreme Judges who were defendants had been "disqualified to hear and decide the cause. Nor was there a Supreme Court competent for the purpose until the fifth of January, 1880. The transcript was filed before there was a court competent to hear it. Under these circumstances we think the rules of this court, which would, if construed according to their terms, deprive the appellant of an opportunity to present his cause to a court competent to hear and decide it, should be suspended."

Justice Thornton wrote this opinion and all the other judges concurred, except Judge McKinstry, who was disqualified.

The appeal came, on its merits, before the court in January, 1881. Wilson & Wilson appeared for defendants, Judges McKinstry and Crockett; Delos Lake for Judges Wallace and Niles; and Pickett appeared on his own behalf.

The court was of one mind, saying: "We are not aware of any principle upon which this action can be maintained. There is no question but that the Supreme Court of this State had jurisdiction to adjudge as to contempts, and to punish therefor.

"A complaint claiming damages and stating in substance that the defendants, sitting as the Supreme Court, knowing that the plaintiff had not committed a contempt, and not having acquired jurisdiction over his person, falsely, wilfully and maliciously adjudged him guilty of contempt, and ordered and caused his imprisonment, does not state a cause of action."

In 1883 Pickett left San Francisco on a trip to the Yosemite Valley. At Mariposa he had to leave the stage on account of sickness, and, going to a hotel kept by Mrs. Jane Gallison, he introduced himself as "Philosopher Pickett," and was given every attention. The good and simple woman took him for a philosopher indeed, but this consideration did not control her action. It was soon seen that the malady (of the stomach) was mortal, and the dying man gave his landlady, who nursed him herself, a letter to Judge Currey, asking him to reimburse her for her expenses, and pay her charges. The Judge headed a subscription list and called on those whom he knew were as intimate as he had been with Pickett, some of whom refused to contribute. With the help of Hon. W. W. Montague, Colonel Hollister, and others, a sum much larger than the entire bill, including the burial charges, was raised and remitted. This was after Pickett's death, which came to him a week or so after he left the stage-coach. His "ministering angel" attended personally to every detail of the last duties, laying him in the public cemetery at Mariposa.

Our philosopher did not subscribe to the inspired insurance that man is "a little lower than the angels, and crowned with glory and honor." He rather cherished the sentiment of Byron's lines over a dead dog in Newstead Abbey—quite complimentary to canine and contemptuous of human kind. "A dead dog!" It was thus we heard an old bar leader refer to the lines, as being

most convenient. They are more elegantly entitled in the book, "Inscription on the Monument of a Newfoundland Dog." Pickett never said anything so misanthropic as these lines, but he requested his landlady to see that they were read at his burial. She complied. As there was no one else to do it, she performed the office herself. The scene is pathetic to old acquaintances in the great city: the faithful woman, herself a stranger to the dead, staying the falling earth to read the strange words over the strange man! Perhaps he might have desired us to repeat them here:

When some proud son of man returns to earth,
Unknown to glory, but upheld by birth,
The sculptor's art exhausts the pomp of woe,
And storied urns record who rest below;
When all is done, upon the tomb is seen,
Not what he was, but what he should have been.
But the poor dog, in life the firmest friend,
The first to welcome, foremost to defend,
Whose honest heart is still his master's own,
Who labors, fights, lives, breathes for him alone,
Unhonor'd falls, unnoticed all his worth,
Denied in heaven the soul he held on earth;
While man, vain insect, hopes to be forgiven,
And claims himself a sole, exclusive heaven.
Oh man, thou feeble tenant of an hour,
Debased by slavery or corrupt by power,
Who knows thee well must quit thee with disgust,
Degraded mass of animated dust!
Thy love is lust, thy friendship all a cheat,
Thy smiles hypocrisy, thy words deceit!
By nature vile, ennobled but by name,
Each kindred brute might bid thee blush for shame.
Ye! who perchance behold this simple urn,
Pass on,—it honors none you wish to mourn:
To mark a friend's remains these stones arise;
I never knew but one—and here he lies.

Such was his sepulture, and such the philosophy with which he turned from his problems (who shall call them petty) and faced the Unknown—to find, perhaps the clouds that had settled on his intellect, all rolled away; certainly so, (to quote a great lawyer and fine poet).

" . . . . . if there be a sphere
Where all is made plain which so puzzles us here."*

—*THE EDITOR.*

*Wm. Allen Butler, of New York, in "Nothing to Wear."

REMINISCENCES OF OUR JUDGES AND LAWYERS

REMINISCENCES of JUDGES and LAWYERS

JUDGE McKINSTRY.

As a *nisi prius* judge, Hon. E. W. McKinstry dispatched business with promptness. The late Mr. A. P. Crittenden told the writer the following:

In 1855 I had occasion to visit Santa Rosa to try a case. It was the first day of the term of the District Court. The hour for the meeting of the court was 10 a. m., and a large number of lawyers and of parties interested were assembled, when, about 11 o'clock, the Judge (McKinstry) arrived from the adjoining county on horseback. Dismounting at the court house door, his honor mounted the bench and proceeded to examine the trial list which was placed before him. At that time the Code provided that in case of the sustaining or overruling of a demurrer to the complaint, costs to the amount of $20 could be imposed as a condition to the amending of the complaint or filing and answer, as the case might be. After reading the list of cases, the Judge remarked, "I perceive here some twenty-five actions of ejectment. The complaints *seem* to be in the ordinary form and to be sufficient. Counsel for defendants in each of these actions will have an opportunity to withdraw the demurrer within five minutes by the clock upon the opposite wall, and to answer forthwith. In case a demurrer is insisted on and it shall be sustained, I shall deem it my duty to require $20 to be paid by plaintiff as a condition to his amending, and in case it is overruled the defendant must pay $20 as a condition to his answering."

To appreciate what followed, it must be understood that the terms in Sonoma county were very short, and if a demurrer to the complaint were overruled, and the usual ten days given to answer without cost, this operated a continuance of the cause and a delay of at least three months, and until the next term. Well, the five minutes began to run; after a lapse of about four of the five minutes, a weak voice in the rear of the court-room exclaimed, 'May it please your honor, I withdraw the demurrer in Smith vs. Brown.' 'And I withdraw

it in Williams vs. Johns.' 'And I in Hopper vs. Hopkins,' etc., etc. And thus in five minutes all the demurrers were disposed of."

Some curious things happened in those days. Jasper O'Farrell owned a rancho in Bodega, Sonoma county. A large number of persons were engaged in cutting his valuable redwood and pine trees, when an injunction was issued by the District Court to prohibit this wholesale destruction. Several hundred men calling themselves "squatters" (although comparatively few were actual settlers), met in mass meeting, and declared by resolution that land, like air and water, was the common heritage of freemen; that no court dare attempt to enforce this outrageous injunction, and organized to resist. It looked as if there might be trouble, when it happened the president of the mass meeting was arrested for horse stealing. Now, this crime was apparently held in more detestation by the western settlers than manslaughter, since that species of property could not be constantly watched, as the herds wandered over large tracts of land; and residents of the early days will remember that even the statute at one time provided that at the option of the jury a horse thief might be hanged, *and they were,* sometimes. The aroused indignation of those who attended the meeting mentioned was directed against their president; he left the country, the organization was dissolved, and the injunction became operative.

The Fitch Rancho, in the upper part of Sonoma county, had been confirmed by the appropriate tribunals and a final survey of the tract made under direction of the United States surveyor general. Mr. Bailhache, one of the owners of the rancho, had brought many actions of ejectment against various persons who had intruded upon different parts of the rancho, had recovered judgments in such actions, and executions had been issued on the judgments. A great organization was formed of those who intended to resist the law, and as the organization was said to include hundreds of *voters,* it was feared that the local officers could not be depended upon to carry out the orders of the court. A bold deputy sheriff from Petaluma (the other end of the county), however, proceeded to make an effort to dispossess the defendants of the premises they occupied. Afterward a company of militia was sent to aid in the work. On arriving at the first house occupied by the defendant, the posse found the front yard filled with armed men, uttering threats, etc. Getting further assistance, the deputy turned the defendants out of the houses and put the tenants of Bailhache in possession. That night these tenants were in turn ejected by a crowd of *black men,* and the original occupants placed in possession. The persons who were charged with the last outrage were arrested for contempt and brought before Judge McKinstry at Santa Rosa. Being examined a witness would declare that no violence was attempted or threatened at the house in the yard whereof the armed men were assembled.

The Judge—"How do you know there was no violence?"

Witness—"I was there."

Judge—"Were you in the yard?"

Witness—"Yes."

Judge—"Had a gun?"

Witness—"Yes."

Judge—"Mr. Clerk, enter an order for the arrest of this man as for contempt of court."

This was done in several instances. Again, a defendant would swear, "A gang of niggers came and forced me to go back to the house from which I had been removed."

Judge—"Are you sure they were negroes?"

Defendant—"They looked like it."

As a result of the investigation a large number of citizens were sentenced to five days' imprisonment for contempt. They tore up the inside of the jail, but did not succeed in breaking down the outer door, and they *stayed* there for the full period of their sentence. There was no subsequent trouble in the execution of judgments in ejectment.

The Seventh District included Sonoma, Napa, Solano, Mendocino counties and at one time Contra Costa or Lake.

Early in the fifties the people of Sonoma county under a special statute, voted to remove the county seat from the town of Sonoma to Santa Rosa. Some irregularities occurred in the proceeding and citizens of Sonoma applied for a writ to compel a return of the county records to that place. The question had been argued at Napa and the judge had prepared a written opinion in *favor* of *Santa Rosa*. He was driven from Napa to Santa Rosa by a Mr. Nichols, arriving at the latter place in the evening of a very wet day. The "hotel" was a wooden building of two stories, the upper being an unfinished garret. The Judge and his friend were given a supper of cold meat and stale bread, and were shown to a "room" separated from the main "corral" by a cloth partition about eight feet high. They had noticed that the landlord was curious and anxious to learn the judgment to come in the law suit, and suspected he was ensconced near by where he could hear their conversation. "Oh dear," said Nichols, as he examined the bed clothes. "I wonder if they will give us hot meat for breakfast." "Or milk in our coffee," added the Judge. "Isn't it terrible," said one. "Terrible," echoed the other, etc., etc. The Judge learned afterwards that on the same night the landlord had rushed about to the few inhabitants of the village, exclaiming: "I have heard enough; we are gone; that Judge is going to decide against us; we may as well pack up and go." The next morning the few inhabitants aforesaid assembled in the little courtroom, wearing a morose and gloomy expression. The expression changed however, as the opinion was read, to a look of smiling content, and one of triumph when the judgment was reached in favor of their town, and they learned that the landlord was mistaken in his anticipation of the result.

On the night referred to Colonel Hooker (afterwards known as "Fighting

Joe") occupied a cot in the outer or main part of the garret or "corral." When he retired, the Colonel threw his braces, to which his trousers were fastened, over the bed post near his head, and stuck a candle on the flat top of the bed post. After reading awhile, he blew out his candle and fell asleep. Now the Colonel's trousers were built of some material which was ribbed, the raised portions being filled in with cotton batting. In the night all were alarmed by a strong smell as of burning cloth. Light was brought. The Colonel sat up upon the side of his bed, seized upon his pantaloons, and gave them a preliminary shake. Imagine his sensation, when all of the trousers disappeared in light ashes, leaving attached to his suspenders only the buttons by which they had been fastened to the garment destroyed. In some way the burning snuff of the candle had communicated to the cotton filling and run along each rib until the whole was consumed, yet leaving the general shape of the trousers unbroken until the Colonel's shake blew them to pieces.

In conversing with Judge McKinstry, the writer found him an admirable *raconteur*. He told amusing stories in which many of the distinguished lawyers of a former day were actors. Thompson Campbell, Governor Foote, Balie Peyton, Colonels Irving and Hoge, Senator McDougall and others, statesmen and lawyers, whom he knew well, and all were remembered in his anecdotes. He spoke of meeting Ned McGowan at Tucson in 1860, just after McGowan had been selected chief justice of the "provisional government" of Arizona; the last time McKinstry had seen McGowan he had tried him on a charge of being accessory to a murder—a murder, however, with which he had had no connection. And he mentioned seeing Phil. Herbert, an ex-member of congress, in Mexico, and of the strange life on the Texas frontier. He said that the politest men he ever saw were gathered on the banks of the Rio Grande. "Colonel, permit me," said a gentleman on one side of a cockpit, holding up three fingers (which meant three ounces). "Certainly, Judge, with pleasure," responded the gentleman on the other side of the pit, making a like digital sign. And the bet was made. Nobody could be charged with carrying *concealed* weapons. "They would let me drink nothing but champagne while I was with them," said the Judge, "and nobody was shot while I was there."

JUDGE BURBANK.

"I am old enough for a contest with the oldest man, and with the youngest lady." This, he told us, he said to a lady who had asked how old he was. We had asked him the same question which made him tell us this. He did not inform either of us, however, how old he was.

The Judge once came into our notarial office in San Francisco, with a lady client, who desired to acknowledge a deed. It must be borne in mind that a notary was at that day required to examine a married woman "separate and apart from her husband"—he must therefore inquire whether lady callers were married or single.

"Are you a married lady?" we inquired.

Before the lady could speak, Judge Burbank spoke for her: "No, she is *not* married, but she *expects* to be."

A deep, rich, and beautiful blush suffused the lady's features.

We quickly wrote and attached our certificate of acknowledgment, with impression of seal.

"Is your certificate all correct, do you think?" inquired the Judge.

"It is, Judge," we replied.

He then withdrew with his fair client, the latter still blushing, as if wondering what the "certificate" contained respecting *her*.

Judge Burbank told us on the street once that he had been "sick four years." We learned that he had been adjudged insane, and had been committed to the Stockton asylum. "Is he now in the lunatic asylum, or out on bail?" a wag afterwards inquired of us concerning the Judge.

John Burbank, brother of Caleb, had made "lots of money" in Henderson county, Kentucky. Right after the Civil War, Breckinridge (John C.) having made his flight to Paris, France, John Burbank met him there, and said: "You look, John, more like an American Indian than a Kentucky gentleman." Burbank gave Breckinridge $5000 to send by telegraph to his family in Kentucky, and took him traveling in the far East. They went in swimming in the River Jordan, and Burbank said to J. C. B. : "John, you are reconstructed now, you've washed in the River Jordan, and all your sins are forgiven."

John Burbank, like Judge Caleb, was born and reared in Maine, and had no sympathy with the rebellion, as a political fact, but liked Southern people very much.

A well-known San Francisco contractor told the foregoing to C. G. Howard in the latter's law office, in our hearing, on May 10, 1888. He said that Caleb Burbank told it to him.

In a case which Caleb Burbank once had for the same contractor who told the last story (the defendant being T. Rodgers Johnson, widely known in the Odd Fellows' order,) he took occasion in his address to the jury, to pay a high compliment to the business integrity of his own client, the plaintiff. The plaintiff recovered judgment, and after the adjournment of the court, Burbank said to his client, "Now, don't you be elated over what I said about you in my argument. That was necessary to my case."

John Burbank has been dead many years. Caleb Burbank died at Stockton in the Asylum for the Insane, May 5, 1888, aged eighty-two years.

OUR FIRST PROBATE CASE.

The probate records of San Francisco extend back to June 1, 1848, almost to the birth of the Judge who has been longest on that bench. The first alcalde, John Townsend, after whom Townsend street was named, was the

highest judicial officer in the district. He was addressed as such by R. B. Mason, Colonel First Dragoons, U. S. A., then Military Governor of California, and directed to administer upon the estate of W. A. Leidesdorff, then lately deceased, leaving a large amount of real and personal property.

Governor Mason instructed Mr. Townsend that he should "take the necessary steps to put the estate into the hands of competent and safe men, who should be required to give bond and good security in at least double its estimated value, conditioned for the proper management, accountability and settlement of the same according to such laws as are now or may be created touching such matters." In pursuance of this authorization, Mr. Townsend took charge of the estate, and issued letters of administration to W. D. M. Howard. During the years 1848, 1849, and part of 1850, the first alcalde, or the alcalde of the first district, exercised the functions of a Judge of Probate. Alcaldes Townsend, Leavenworth and Geary so acted during the periods named.

On April 22d, 1850, the legislature passed an Act, in compliance with the State Constitution, Section 8, Article 7, entitled, "An Act to regulate the settlement of the estates of deceased persons"; and Hon. Roderick N. Morrison, the first County Judge, was *ex-officio* Judge of this court, and from which time the Probate Court, which passed out of existence at the beginning of the year 1880, may be said to date.

BALIE PEYTON.

Balie Peyton was one of the earliest and greatest men at the San Francisco bar. As we once had occasion to say of him, "he was a man of impassioned eloquence, of kind nature, the friend and champion of the squatters of Solano and Contra Costa." He had represented his native state, Tennessee, in Congress before coming to California. He, like Baker, was an enthusiastic Whig, and like Baker, he believed that S. S. Prentiss was the greatest of orators. In San Francisco, when the Whig party passed out, he became a Know-Nothing. In the middle fifties, he was in partership at the bar with William Duer, Delos Lake and Julius K. Rose (Peyton, Lake, Duer & Rose). Peyton was an influential member of the great vigilance committee of 1856; he exhibited "The Thieves' Ballot-box" at a public meeting in San Francisco, while the committee was holding sway, on June 16th. On June 18th, 1858, Peyton met that other bar leader, Gregory Yale, back of Oakland, to fight a duel. A letter from Francis J. Lippitt, who had caused the trouble, was received on the ground and restored peace.

Peyton went back to Tennessee in 1859, leaving behind him only pleasant memories. It is related of him that at a Whig mass meeting at Nashville in 1844, he was on the platform when Prentiss made one of his best speeches. Peyton believed that this speech had never been surpassed for elo-

quence and power. Prentiss fainted just as he closed, and Peyton, bending over the great man's unconscious figure, exclaimed: "Don't come to, Prentiss. Now is your time to die; this is the culmination of your fame."

JOHN T. HUMPHREYS.

John T. Humphreys was a native of Virginia. He was born on March 30, 1830, and was admitted to the bar in that State in 1851. He came to California and settled at San Francisco in 1875. He was assistant city and county attorney there for two terms, 1887-90, under George Flournoy, Jr. He was accidentally run over and killed in San Francisco in 1898. He declared to us not long prior to that sad event that he was admitted to the bar long before his education was complete—that he was yet "daily learning new and strange things from the decisions of the Supreme Court." This calls to mind the observation of the venerable M. C. Blake, who was on the bench of several courts in San Francisco in the sixties and seventies. He rarely if ever indulged in humor, and may be he was not indulging in it now. "No man," he said from the bench one day, "knows what the law is, except the Supreme Court."

JUDGE LAKE AND FRANK PIXLEY.

The case of Derbec vs. The City and County of San Francisco was an action to recover damages for the destruction of the type, etc., of the French newspaper, *Echo du Pacifique*, by a mob, when the news came of the assassination of President Lincoln, on April 15, 1865. The trial was not reached for a long time, when it took place in the old Fourth District Court, before Judge E. D. Sawyer and a jury. Frank M. Pixley was attorney for the plaintiff, and Delos Lake represented the city. The plaintiff fixed his damages at $50,000; the jury allowed him $7500. The opposing counsel were strong men, and notoriously combative, and the trial was anything but tame. Among other interesting displays was the following:

Mr. Pixley made an opening summing up for the plaintiff, and drew a picture of M. Derbec, working for years in an honorable calling and establishing a lucrative business, and a mob destroying the work of thirteen laborious years. He touched upon the ruling of the Judge as limiting their claim, without, however, attacking the decision of the court. He went through the figures, as sworn and admitted, and after allowing 12½ cents a pound, as the value of the lead when pied on the floor, made out a total of $17,950 proved damages within the ruling of the court, and asked them to give that sum.

Judge Lake rose to close for the defense, and spoke of the claim for fabulous damages, which it had been sought to engineer through the court, and drew a picture of M. Derbec, if the court allowed the claim, or the jury

accepted the proof, going to that city of riotous luxury, Paris, to spend the remainder of his days in affluence on the fruits of the verdict, taking in his train the counsel (Pixley), who for his share in procuring such verdict, would be entitled to—

Mr. Pixley—I appeal to the court. Is this wit or insolence?

Judge Lake (to Pixley)—Which you like, sir. (To the bench) That is for counsel to decide, not the court.

The Court—I think the counsel for the defense (Lake) is traveling out of the ordinary course.

Judge Lake—I am only following in the steps of the counsel for the plaintiff (Pixley), who ignored the evidence and complained of the rulings of the court.

The court said this was a matter personal to the court itself, and the court did not think it necessary to interfere with Mr. Pixley, and did not need any protection from others. A certain latitude is allowed counsel, but there is no propriety in these personalities.

Judge Lake—I think the counsel (Pixley) is unnecessarily sensitive; there is nothing in saying—

Mr. Pixley—The counsel is continuing his objectionable personalities.

The Court (peremptorily)—Gentlemen, drop the discussion.

Judge Lake—Why does the counsel appeal to the court for protection? Why does he not direct himself to me if he wishes to take the matter up? He is not a schoolboy.

Mr. Pixley (fiercely)—He is neither a schoolboy nor a blackguard.

Judge Lake (with dignity)—That reply I cannot notice here.

The Court—Gentlemen, this matter must stop here—I insist upon it. I will have no more of this unseemly altercation.

It may be proper to add that both of the belligerents lived many years after this—strange as it may seem.

D. W. PERLEY.

Among many incidents, ludicrous, pathetic, and serio-comic, which occurred in the strange life of the late erratic lawyer, D. W. Perley, is one which was witnessed by only two persons besides himself, and which never was embalmed in print. It is given, as it has fallen on more than one occasion, from the lips of the late Lloyd Tevis, the Midas of our State, whose reputation among his brother financiers for business diplomacy, was as great as his general renown for multiplying dollars. "I think I know Perley," said Tevis, on one occasion when Perley's character for courage was in dispute; "I think I have a proper estimate of him. He will fight; there is no doubt about it. I have seen him tried on more occasions than one. He prefers peace; never seeks a quarrel, and when he gets into trouble his very first

impulse is to show the white feather. But his pride of character soon asserts itself, and he is ready, even anxious to take the offensive. I never shall forget a scene which occurred in Perley's room once (this was about 1867), in the Russ House, in San Francisco. It aptly illustrates what I have said of Perley's character as a belligerent. There was a dispute between Perley and Harry Logan, and I was present as mediator."

We will interrupt Mr. Tevis right here a moment to say that Mr. Perley looked upon him as the very prince of moneyed men, and that this Harry Logan is the gentleman who was shot, nearly fatally by Guerrero, a rich young native Californian, and against whom Logan recovered heavy damages.

Now, to let Mr. Tevis resume: "During the negotiations between Perley and Logan for a settlement of their business differences, I was the only person in the room besides the parties interested. We were seated at a table, Perley on the side where the drawer opened. Logan was his vis-a-vis, and I sat at one end. It was difficult to agree on terms, and in the heat of the dispute, Logan, hot-blooded and impetuous, called Perley a liar. Perley sat with bloodless face and quivering limbs as though praying that the floor would open to let him through; but the painful scene changed in an instant. Quickly pulling open the drawer of the table and catching up a brace of revolvers, he thrust them in the face of his astonished adversary, and, with terrible emphasis, bade him take his choice. 'Take your choice, take your choice,' he said, as he leaped from his chair, his face more crimson with rage and his eyes flashing fury; 'we'll settle this matter instantly.' It was now Logan's turn to back down, which he did with as much grace as could be expected 'under the circumstances.' Logan is a brave man, but he had been too hasty, and in surrendering, he did so with dignity, acknowledging his error."

BOOKER, CREANOR AND BEN. MOORE.

Mr. F. H. Ayers, of Modesto, who is not a lawyer, sends us some pleasant recollections of Samuel A. Booker of Stockton, Judge Creanor and Ben. Moore.

"My first recollection of Judge Booker," writes Mr. Ayres, "was in Stockton in 1851. He was the attorney for a man named Martin, who was the plaintiff in a case in the District Court, suing for a copartnership accounting in a band of cattle. The defendant's attorney, D. W. Perley, tried to impeach the testimony of a witness in an affidavit. Because the witness had once been living in the Hawaiian Islands and taken the oath of allegiance to that government, which Perley denominated 'a pusillanimous monarchy,' the lawyer made the point that he was not worthy of belief. Thinking perhaps

Mr. Booker, (who had not then been on the bench) might not be familiar with the status of persons doing business in those islands, I informed him it was only a quasi allegiance the man had to give, as I had been there, and was somewhat acquainted with the matter. Booker thanked me, and said he had informed himself on that point. I was surprised at his legal acumen.

"In the early sixties, when Booker was sitting as Judge in a case where a woman, Mrs. J. P. D. Wilkins, was being tried for the murder of her husband in Stockton, a female witness was put on the stand, and when an attorney commenced questioning her she began to relate that she was a spiritualist and a medium. Judge Booker, who was apparently taking no notice of the witness, but heard what she said, immediately turned toward her and said, 'Stop, Madam.' Then he told her that if she knew anything about the case, to tell it, but that he did not want any spirits in his court, and was not going to have any. That settled the matter. The court-room was crowded, and his dictum was applauded.

"In the fall of 1849, when Judge Charles M. Creanor, who had just arrived in California from across the plains and was camped with a party on the outskirts of Stockton, some one came to him and said there was a man to be tried in the alcalde's court for some trivial offense, larceny, he thought, but whether grand or petit he did not know; and, said he, the man had money to employ an attorney, but the Judge was going to try the case without his having one, or a jury either. So Creanor volunteered to go and defend him. He asked the Judge under what law he was to be tried, Mexican or American. The Judge did not know for certain. There were no law books in the court-room, but Creanor produced an old gazeteer of the State of Arkansas that had the Constitution of the United States in it, and showed the Judge that the man had the right of trial by jury under American law, and also had the right to an attorney. He got the jury, and the prisoner was acquitted." "I heard Judge Creanor say," writes Mr. Ayers, "that he believed they would have hung the man if he had not been there to defend him."

"Ben. Moore, who was practicing law in Sonora, Tuolumne county, in the fifties, was a peculiar character. He had a feminine, musical voice, and when excited it was pitched to a high key. But he was always decorous and had the esteem of his associates. On one occasion in a case in a justice's court between a white man and a colored man, Moore being attorney for the latter, when examining the jurors he was very particular, in questioning them, to know what State they were from. He would question them in this way: "What State did you say you were from?" If the juror answered "Texas," he would repeat the name short and quick, twice, "Texas, Texas," and then say, "All right, all right." If the juror answered "New York," he would say "New Yorke, New Yorke," with a long sound on the "e," and then say, 'We'll excueese you.' "

FRANCIS J. DUNN.

Among the *causes celebres* occurring in early times was one of forcible entry and unlawful detainer, brought by one faction of a church in Nevada City against another faction, which had taken possession of the church edifice and held it to the exclusion of the complaining brethren. The case was tried before Justice J. P. Van Hagen (he was afterwards a justice in San Francisco), a weak, amiable old man, and by a jury. The proceedings were turned to a ridiculous farce from the start by the unfortunate fact that the prosecuting attorney was excessively inebriated, and the other lawyers were not far behind in that regard. The justice sat behind a light pine table. The prosecutor, in arguing law points to the justice, and especially declaring that he should "go to jail with my brother Thayer," whom he believed was about to be committed for contempt, notwithstanding the court disclaimed any such intention, would strike the table heavily with a book, and make it dance almost to the judicial nose. "Do not pound my table, Mr. Dunn," said the justice. "May it please your honor, I *will* pound your table," said Dunn, hitting the frail piece of furniture a blow that made it skip again. A few days before, Dunn had had a dog case before the same justice, the decision in which did not please him. Alluding to that case, he said, "I dreamed a dream the other night, that an old fool of a justice decided that a dog is property (whack). "Don't pound my table, Mr. Dunn." "May it please your honor (whack), I *will* pound your table" (whack). Here one of the jurymen said: "We have had enough of this sort of thing. I have something better to do than to listen to this drunken gabble." "Yaas, you have, have you?" said Dunn, with a sneer. "Who are you? Know it all, don't you?" The other lawyers had been grinning, and rather helping out the absurdity of the thing; but this intervention was too much for them, and they thought it necessary to frown down further levity.

The case proceeded until it came to Dunn's turn to address the jury, when he began as follows: "Gentlemen of the jury; and when I say gentlemen of the jury, I mean eleven of you; for there is one of you who is very far from being a gentleman." Here the juror referred to jumped up and pulled off his coat, and started for Dunn, but peace was restored with difficulty, and the case concluded.

On one occasion, in replying to an argument, Dunn said: "The remarks of counsel remind me of a quotation from a classical poet. I cannot exactly recall the name of the poet, and I have forgotten the quotation, but if I could repeat it, the court would see that it is apropos."

It is related that Dunn prepared his statements for the Supreme Court without much condensation or regard to method, copying all kinds of papers and orders into them. Before printed transcripts were in vogue, such documents were rather confusing. It so happened that as Dunn was arguing

one of his cases in the Supreme Court, Judge Murray, under some mistake as to the facts, said to the advocate that the court did not want to hear him any further, but some time after decided the case against him. Dunn soon had another case before the same tribunal, and commenced reading his interminable transcript, with motions, orders, and evidence set out at appalling length. "State your case, Mr. Dunn," said Judge Murray; "it is not necessary to read the whole record." "No you don't, may it please your honors," said Dunn; "the Supreme Court told me that once before, and then decided the case against me. I am going to read this record and make the court understand me." This he did, to the horror of the court, which had then no limit for time, and the reading and argument occupied three days. It was not long thereafter that the Supreme Court fixed a limit to the length of arguments before it. It is only fair to Mr. Dunn to remark that his eccentricities, when under the influence of liquor, now color the memory of him, perhaps to the unjust exclusion of other more worthy impressions. His practice was large, and he was quite successful in conducting it. He was understood to be scrupulously and even belligerently faithful to his clients, and his convivial habits were broken by long spells of sobriety. He was not the greatest toper at the Nevada county bar, but was probably the most eccentric man when inebriated. He was one of the most singular characters at this bar. He was a man of sturdy sense, somewhat uncultivated, who had picked up a fair knowledge of law, was pleasant and accommodating when sober, and opinionated and surly when in his cups.

BUCKNER AND ELLIS.

It was once announced in a newspaper that a certain lawyer was the author of the Sole Trader Act. It was an error. E. F. W. Ellis wrote and secured the passage of that measure, its necessity being suggested to him by the circumstances of a certain female friend of his in Nevada City. It is one of the wisest acts on our statute books, although it has often been made the cover of gross fraud.

Ellis was in the lower house of the California legislature in 1852. He was an able lawyer; but, like Baker, he was restive in harness, and thirsted for glory. He went back to his State and Baker's State, and, during the war, was Colonel of the Fifteenth Illinois regiment, one of the earliest to volunteer on the first call. He fell in a charge at Shiloh. "Catch me, boys," were his last words. While criticising the evidence of a witness, on one occasion, in a Nevada City court, Ellis glanced at the subject of his remarks just in time to see him draw a pistol. Ellis drew a long knife, which he carried, and, leaping over the bar table, rushed upon his enemy, who at once fled into the street. Ellis then returned and concluded his argument.

Judge Stanton Buckner was from Missouri, to which State he returned.

Sargent, in his hasty history of the Nevada bar, tells this of Buckner: To demur was his strong forte. He was a kind and gentlemanly man, but disagreeable to practice with, by reason of his prolixity and slowness. In arguing a petty criminal case one day before Justice Endicott, who was very thin and bony, and who had a very hard seat to sit upon, Buckner, after a long talk, assumed a certain attitude peculiar to him, and which indicated that he had a great deal more to say. "I will now show your honor," he said, "that a man is presumed to be innocent until he is proved guilty." "The court admits that," said Endicott, interrupting; "the court is with you in that; but there is no presumption that the court's bottom is made of cast-iron."

EARLY HISTORY AND EARLY DAY LAWYERS.

It has not often occurred that the making of a constitution or the establishment of a State government has marked out a new era in civilized government beyond the confines of that State, or secures to the people outside of the State rights they had not formerly possessed. But such was the fact in regard to California.

The admission of the State into the American Union was a most exceptional occurrence; it did mark out a new era in the course of the political history of this nation because California became a free State, and from the beginning we made history fast. Three years after the territory was acquired from Mexico, fully three hundred thousand people had settled there, and we built better than we knew. True, the people who then came were not engaged in permanent pursuits. Placer mining for gold was the only business of that time, but the material for a State was here, and it remained here. The young, the cultivated and enterprising men of the whole country flocked to this new field, and very soon a government was created commensurate with the needs of this people, and largely in advance of the governments of other new States which had been recently admitted into the Union.

We had no laws here in the beginning because we had no territorial government, so in the fall of 1849 a constitutional convention was called, and as early as the 15th of December, 1849, the first California legislature met, pursuant to that constitution, at San Jose. Mr. Stephen J. Field, afterwards a Justice of the Supreme Court of California, and for many years a Justice of the Supreme Court of the United States, prepared and submitted to the legislature a Practice Act, which was duly passed, and the machinery of the new government was thus started. By a clause in the first constitution, the first Judges of the Supreme Court and of the District Courts were selected by the legislature. The first decision of the Supreme Court was made in March, 1850.

We inherited many of the then existing laws as to land titles from Mexico, and thus in the very organization of the California State government we took

a long step towards combining the best of the legal precedents of the Old World with the progressive spirit of the New. We united the old civil laws of Spain and Mexico with the most useful of the English common laws, in forming our system of jurisprudence to govern the property rights of the people of California, and at the same time we secured the broadest liberty to all men, and this was done at a time when there was a most active rivalry in the admission of new States into the Union. This rivalry was between freedom and slavery.

As stated, California was made a free State. The love of personal liberty was thus early inculcated in our people. Added to this, the romantic beauty of the country, the wild and unsubdued mountain scenery, aided by the circumstance of our isolation from other parts of the American Union, made the people of this new land bold, adventuresome and independent.

It may be noted, as before stated, that the old Mexican laws in relation to land titles came with our treaty with that country. This treaty introduced into California jurisprudence the civil laws as to the grant and deraignment of the title to land. Thus a knowledge of the civil law was combined with the necessary knowledge of the English common law, together with the statute laws of the State and Nation, and our bench and bar were early schooled in the most intricate questions involved in land-law litigation.

The discovery of gold in California and the vast amount of that precious metal taken from our placer mines created new enterprises, by reason of the vast increase of wealth. This inspired new and varied legal inquiries, and of necessity there was called into use new, varied and different legal constructions, and new legal maxims, which were made to fit the altered condition of our people. California was alone, indeed. If we had been on an island in a vast and boundless ocean, we could not have been more isolated from the rest of the world. We were so remote from other parts of our own country that we became a people unto ourselves. From necessity, we were builders of government. We became self-reliant, because we had no one to lean upon, and thus the inventive genius of the hour gave to the bench and bar of California a wider scope and a broader and more varied experience, and created a new legal procedure to fit these peculiar conditions.

For instance, the popular miners' meetings of the early fifties, with the codes of local laws adopted by each of them, were ever after recognized as legal and binding, and the acts of those public meetings from thence till now form a part of the laws of the State.

But California was particularly fortunate in its judiciary. Judge Ogden Hoffman, one of the first United States District Judges, was a man of broad understanding, of rare and varied learning in the law and of undoubted integrity. By his decisions he settled more than one-half of the conflicting land titles of the State, and he had more to do in deciding intricate questions affecting the settlement of all Mexican land titles in California than all the other

Judges of the Coast. He was technical only when technical rules secured more ample justice, but generally his decisions were broad and far-reaching in their scope.

Our State judiciary was hardly less conspicuous for its ability. The first Judges of our Supreme Court were S. C. Hastings, Chief Justice (the founder of the Hastings Law School), and H. A. Lyons and Nathaniel Bennett, Justices. In the preface to Volume I of the California Reports will be found a statement of the embarrassing situation then confronting that court. It was found that the laws of Spain and Mexico, by the treaty stipulation between Mexico and the United States, were so interwoven into American law that it often became a problem of more than doubtful solution where the civil law ended and the English common law and our statutes began.

Most of those who early became conspicuous as Judges and lawyers came to California unheralded; they were all young and untried men at home; none of them had family alliances here to help them into business success, or to give them fame in this new land; they depended alone on their own resources, and the strife for success rested on the survival of the fittest; and the fittest man, according to the test then adopted, was the most successful man, and the most successful Judge was the man who dispensed even-handed justice. A sense of justice was the predominating sentiment of all men at that time, and if the people could not secure justice through the courts, they got it by means of a rope.

It would be impossible to attempt to name all the most learned among our early California lawyers; but first among those whom the writer met and knew was Hall McAllister. All in all, he was the ablest lawyer I ever saw. His varied learning, his indomitable industry, his faultless memory, added to a broad-minded conception of the right and wrong of each case in which he was employed, together with a magnificent presence, and urbanity or manner in court; and the further fact that with the old and young alike he was always a gentleman; marked him as the most illustrious member of the ablest bar any new State had theretofore produced. It mattered not whether defending a person charged with murder, trying a patent case, engaged in an action in equity for an accounting, or whatever the legal problem was, he was always the same serene, commanding intellect of the case.

Following Mr. McAllister, and only a step below him in point of intellectual endowments, were the Shafters, Halleck, Peachy and Billings, Hoge, Wilson, Gregory Yale, John B. Felton (who, however, came to California at a later date), and many others not named; while up country and in the mines was the ever-famous Tod Robinson, a man of rare and most distinguished ability; McConnell, hardly his inferior, and later on, S. W. Sanderson. afterwards on the Supreme bench, and a host of others I might recall. Indeed, it would be quite beyond the limits of this article to even mention all the distinguished characters who at an early date formed the nucleus of a bar second to none in any other State in the Union.

A few of the pioneer lawyers of California are now living, and to none of these do I intend to refer. At the Sacramento bar there were many who should be named. For instance, H. O. Beatty, for a long time a member of the firm of Robinson, Beatty & Heacock; Colonel P. L. Edwards, J. W. Winans, Thomas Sunderland and J. B. Harmon, all able and learned men. At the criminal bar no man in or out of California could equal the ever-charming N. Greene Curtis. He was a most persuasive forensic talker, a devoted friend and companion, and always and everywhere a gentleman. Could I say more of this gifted and lovable man?

While Southern California was slow in developing, yet conspicuous among the pioneer lawyers were E. J. C. Kewen, Volney E. Howard and P. Della Torre.

In the early days the Supreme Court was not very strict as to the examination and admission of young men to the bar. I know an instance where a young man was being examined by the court for admission, and Mr. Chief Justice Baldwin asked the applicant one question, "What is a deed?" The applicant gave Blackstone's definition of "Any instrument of writing under seal." A young and quite fresh member of the bar who was present and who wished to air his learning, objected to the answer as being too broad, but Judge Baldwin, who was quite a wag as well as a great lawyer and a most learned Judge, said that unless the complaining attorney could show he was a party aggrieved, the court would not overrule Blackstone that morning.

So another instance, somewhat in the same line, occurs to me. A young and rather glib student was being examined by Mr. Justice Norton for admission to the Superior Court. Judge Norton was a man who talked very little to any one, and so he had great aversion to examining applicants for admission. In this instance he asked the applicant two questions; first, "What is the purpose of a demurrer?" to which the student made the popular answer, "For delay." The Judge said to him, "Young man, that's not law." The Judge then proceeded to put another and a second question to the applicant: "If a man brought you a promissory note past due and wanted it collected by law in the most expeditious manner, what would you do?" The student answered, "I would collect my fee," when the Judge replied, "Young man, that is not law," and bending over the high desk in front of him, for he was a stout man, he said to the clerk, "Mr. Clerk, swear him in." That ended the examination and produced a general laugh, but in which Judge Norton did not join.

In the early days of my law practice at Sacramento there was a famous "dog case," so-called, being tried before a justice of the peace. The charge was that a vicious dog had bitten a boy, and the suit was for $299, the jurisdictional limit of the Justice's Court. The case came on for trial on a hot day in summer, and Len Harris, the then constable, afterwards killed on the

railroad by highwaymen, summoned a jury, but it was so oppressively hot that every one summoned had some excuse for not serving as a juror, until it began to look as though a jury could not be obtained. At that time the parties might agree to a jury in the Justices' Court, composed of any number consisting of twelve or less, and so a well-known convivial member of the bar turned to the counsel in the case and said, "Accept me as a jury." This was done, and the case was tried. The court at all convenient times adjourned to Harry Clay's saloon for mint juleps, until toward night the court, jury, counsel and parties were loaded. Finally the case was submitted, and as it had been the custom for the justice, constable, lawyers and parties, as there was no jury-room, to leave the jury in the court-room (in this instance by itself) while they went out on the sidewalk, every one left the room except the jury.

Soon the jury wanted more juleps, which were sent in to him, until he motioned us all to come in. With some difficulty, the justice mounted the rostrum, and asked if the jury had agreed. The single juror, with some considerable effort, arose and said with dignity, "May it please the court, the jury can't agree." This was so funny that the case ended there. The dog was killed, the boy got well, and every one was made happy by this unique verdict, or rather lack of verdict.

Judge Creanor, the early District Judge of the counties of El Dorado, Amador, Calaveras, Tuolumne and San Joaquin, was a most peculiar man. He was an able, eminently just and always an honest man. He was formerly, given to gaming, but his play at cards and his companionship for that purpose was kept clearly distinct from his judicial duties. So popular was he that in 1861, when a bill was introduced into the legislature to divide up his district, the object being to give Hon. James H. Hardy a judicial position, every lawyer in his whole district, of all political complexions, petitioned the legislature not to pass it. But the bill passed, and in the end Creanor died at Stockton, out of all position and quite poor.

Judge Creanor was not educated for the law; he was an old army officer. He rarely gave reasons for his decisions; he just decided the cases, and almost always decided them right.*

The writer was once present at a murder trial before him. He did not befog the jury by a long, meaningless or contradictory charge. He first submitted the proposed instructions, offered by both sides, after pruning them down to meet his approval; then he opened the statute and laying his open hand upon its broad pages, as if to say, "Gentlemen of the jury, here is the law," he read the statutory definition of the crime. He told them briefly

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*This Judge was about to take the steamer at San Francisco once for New York by way of Panama. He looked into Bancroft's Book Store, which had a law department. A lawyer friend from Stockton met him there and to him the Judge said that he was looking for some light reading to take with him on the steamer. When he had made his purchase, his friend noticed that the light reading he had selected was "Blackstone's Commentaries."—*EDITOR.*

they must give the prisoner the benefit of all reasonable doubts, but he also clearly defined what a reasonable doubt was. He then without delay, and without muddling the jury, sent them out to confer as to their verdict. They almost always found a verdict. Crime was punished in his district, and he was legislated out of office largely for that reason.

In the early fifties there were many serious contests between grant men (so-called) and squatters. Most of these troubles were settled out of court. This was always a dangerous way of settling a question of law, and in time most of the lawyers of California objected to the jurisdiction of the court over what was known as "the gun practice."

I was once employed by some public land men, or "squatters" as they were termed, and I advised them to appeal to the laws of their country and quit fighting. They said they would, and in a few months one of their number called on me, and said they were then prepared for a peaceful mode of settling their land troubles. I was much surprised and asked him how. He replied that they had formed a Squatters' League, and every man but one within ten miles of his place belonged to it, and the only non-league man was a grant man. Soon after I was called down to the so-called fighting line, where they were going to try some forcible entry cases. When I got there I found they had a jury summoned, every one of whom was a member of the League. The justice and constable were members of the League, and the verdict was necessarily in favor of that body. After the trial the grant owner asked the men who had cut what he claimed to be his hay, if they would pay the taxes on the land, as they were in possession of it. They answered that public lands could not be taxed, and that they did not want to astonish the government by paying taxes on its own property.

Colonel Hoge was for many years a leading member of the San Francisco bar, and was for some years Judge of the Superior Court. He was always on the most pleasant terms with all the members of the bar and Judges of the Supreme Court, and always a genial man.

At one time he was in the Supreme Court waiting his turn to argue a case, when he got into an animated whispered conversation with one of his associates, and unthinkingly talked a little loud. This disturbed one of the members of the court, who called the messenger and asked him to tell Colonel Hoge that he was disturbing the court. The Colonel, being unconscious that he had offended, said: "Tell the Judge to go to the devil." The messenger made no report to the Judge until he was summoned, and asked what Colonel Hoge had said. "Why," said the messenger, stammering a reply, "he said Your Honor might go to the devil." The Judge calmly replied that he thought that was what he said.

Perhaps one of the most brilliant intellects that the bar of this State ever produced was Mr. C——, of Sacramento. As large of heart as he was of intellect, he had but one enemy (himself), and but one conspicuous fault (the desire to indulge too much in the cup that both cheers and inebriates).

He came from Pennsylvania, my own State. Both of us were young men, he somewhat my senior in years, and we met often and talked over events at home. I remember an instance in his life which lingers with me both for the pathos and humor of it. C—— had been out on one of his periodical drinking spells, what in those days was called a "toot," and I had been trying to induce him to go home.

With much difficulty I persuaded him to get into a carriage to send him to his room. Asking him where he lived, he turned to me with intense dignity and replied: "My boy, I live on the surface of the occasion, and trust to the sublimity of luck." Nothing was truer and nothing more lamentable.

He was an eloquent and a versatile talker. I remember at one time hearing him make a political speech. He had been then a Know-Nothing, and he was attempting to prove that though he was once a Know-Nothing, he was yet loyal to the foreign element of the State, and saying this, he recited in excellent French, and in the most inspiring manner, a verse or two from the Marseilles Hymn, and before he was through with his speech he repeated in German one of the most touching passages from Germany's great poet, Goethe. It is needless to say that he delighted all his listeners.

——*M. M. ESTEE.*

San Francisco, June, 1900.

THOMAS B. REED.

A San Jose press writer under date of August 31, 1899, disclosed that Thos. B. Reed, of Maine, who was speaker of the National House of Representatives, for four years, ending March 4, 1899, was connected with the bar of that section in the early sixties. He wrote as follows:

> The records of the courts here show the facts as to the career in Santa Clara county of Thomas B. Reed of Maine, when he was a young man twenty-four years of age. At that time he spent two years here, and there were prospects that he would cast his lot and fortune in San Jose, for life. As he is remembered now, he was a young man of slight figure, and neither in bulk nor in the impression that he made did he give any promise of the physical size and political eminence to which he afterward attained.
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> On first coming from his native state, Reed for a time taught school at Alviso. Subsequently, he located at San Jose, and began the study of law in the office of S. O. Houghton, a well-known pioneer attorney of Santa Clara county, who afterward became a Congressman from the then Fourth Congressional district, and who is now prominent at the bar of Los Angeles. Reed was admitted to the bar at the September term, 1863, of the District Court of which Samuel B. McKee was Judge.
>
> The committee appointed to examine him as to his qualifications was composed of S. O. Houghton, C. T. Ryland, the well-known capitalist, who died a few years ago, and W. T. Wallace. At that time, Attorneys Ryland and Wal-

lace were partners in a flourishing law business in San Jose. On the day following the application the fact of young Reed's admission to practice appears in the court records as follows—on September 8, 1863:

And now come Messrs. Ryland, Wallace and Houghton, the committee appointed by the court to examine said applicant, Thomas B. Reed, Esq., and report favorably to the admission of said applicant. It is, therefore, ordered by the court that the said Thomas B. Reed, Esq., be and he is hereby admitted to practice as an attorney and counsellor of the court upon his taking the necessary oath.

It has been said that the examiners only asked Reed one question, which had little if any relevance to his knowledge of law practice, but that the answer was so witty they let him off on that and recommended his admission to practice at the bar without further ado.

On his visit to San Jose during the presidential campaign of 1896, Congressman Reed made some inquiries regarding Judge Isaac N. Senter, who was County Judge there when he was admitted to the bar. Reed stated that he remembered his first case before him. It was the defense of a Spaniard named Jose Garcia, charged with an assault with the intent to kill and murder. The testimony offered by the prosecution made it plain enough that Jose Garcia had killed his man, and there was apparently no defense to offer. Speaking of it himself, Reed said once upon a time: "All I could do was to offer some evidence concerning my client's previous good character, and then talk. This I did to the best of my ability. I scarcely knew what I was going to say, but while on my feet, a happy thought came to me. 'Admitting for the sake of argument,' I said to the jury, in my most persuasive way, 'that a Senor Garcia did shoot this man, where is the evidence that Jose Garcia is the Jose Garcia now on trial in this court?' I then went on to declare that while the prosecution had offered considerable testimony to the effect that Jose Garcia had done the shooting, it had not in the least particular identified this Jose Garcia with the crime. 'Suppose,' I asked, 'a hundred witnesses were to come into court and swear they had seen John Smith shoot Bill Brown, and then suppose a John Smith was on trial for his life, accused of the crime. Would it not be necessary, gentlemen of the jury, to offer proof that this John Smith was the very John Smith who had committed the crime?' It chanced to be an unusually intelligent jury." added Mr. Reed, "and saw the point very quickly, and acquitted my man. This is the way in which I won my first case in court."

Judge Senter, before whom the trial was held, died several years ago.

THOMAS FITCH.

Since Baker's death, which occurred nearly forty years ago, no voice has ever stirred the hearts of men in the Pacific states, if indeed, anywhere, like that of Thomas Fitch. Mr. Fitch is in Salt Lake City now, in the practice of law. Only a short time before this history was completed, he sent us a newspaper copy of a public speech of his recently delivered there. It was full of the old fascination. This charming orator of the American bar was for a time prominent in law and politics in California. He was born in New York city on January 27, 1838. He came to California from Wisconsin in 1860, stumped this State for Lincoln in that year, and was assemblyman from El Dorado

county in 1863. Removing to Nevada he was a member of the constitutional convention of that state in 1864. He was district attorney of Washoe county, Nevada, 1865-67, and represented that state in the lower house of congress, 1869-71. He lived and practiced law in San Francisco in 1874-78. In the latter year he removed to Arizona and was a member of the Arizona House of Representatives in 1879. About 1896 he removed from Arizona to his native city and left New York for Salt Lake in 1899. Among his public addresses in San Francisco, which are masterpieces of eloquence, are his remarks to Sunday School scholars after their floral procession in San Francisco, July 4, 1861; address at the dedication of Red Men's Hall, June 17, 1875; oration, July 4, 1875; oration, Memorial Day, 1876; all appearing in the local press; and his oration on Garfield at Tombstone, A. T., in October, 1881.

The famous labor agitator of San Francisco (see the sketch of Henry E. Highton) had a high appreciation of Mr. Fitch's oratory. This is said to his credit, although *he* did not give *credit* to Mr. Fitch for selections from the latter's graceful speeches. The following in regard to Kearney's effort, at Faneuil Hall, Boston, in 1878, will be found both amusing and instructive:

The San Francisco *Daily Report* of August 6, 1878, said:

> If any person happens to have a copy of a speech made by Tom Fitch at a Republican meeting held at Union Hall in this city in June, 1876, to ratify the nominations of Hayes and Wheeler, he will find the Orion, Uranus, and Jupiter pyrotechnics, verbatim et literatim et punctuatim. That Carl Browne, in patching up Kearney's speech, should have stolen bodily two such celebrated bursts of eloquence as these, and sandwiched them indiscriminately in with Kearney's vulgar profanity and coarse abuse, shows either that Kearney's two-dollar-and-a-half speech-writer is a poor specimen of his class, or else was perpetrating a joke that may get him into trouble..

Upon which the *Bulletin* of the next day observed:

> The fact that Kearney stole the commencement of his oration at Faneuil Hall bodily from an address delivered by Colonel Bob Ingersoll, proposing James G. Blaine for the presidency at the Cincinnati convention, has already been established in the *Bulletin*. It appears, from the *Daily Report*, from a speech delivered by Tom Fitch at the Hayes ratification meeting held in this city two years ago, that there were three men speaking on the Faneuil Hall platform—that is to say, Ingersoll, Fitch and Kearney—when as a matter of fact, there was only one present—that is to say, Kearney. Ingersoll is at this moment in England, and the silver-tongued Fitch has long since disappeared in the wilds of Arizona. It must have required a good deal of nerve to get up before a Boston audience and endeavor to palm off the utterances of these orators for his own, but the California agitator seems to have been equal to the task. It is fortunate, however, that it is not difficult to tell where Ingersoll ends and Kearney begins; or where Kearney stops and Fitch takes up the strain.

That there may be no mistake about it, we reproduce Kearney's peroration and the extract from Fitch's speech above referred to. The speech of Fitch was delivered at Union Hall on June 22, 1876. The extract is as follows:

"You walk the earth at mid-day, and the vast expanse of the blue heavens appears unrelieved by the sparkle of a single star. Our world seems the lonely satrap of space, chained to the fiery chariot of the mighty sun. And yet we know that Mars still holds his course; that Venus still whirls through space; that Saturn circles amid his shining rings; that Jupiter and Uranus are flashing on the confines of light; that the blazing belt of Orion, and the guiding gleam of the North Star are all there, and that, as the centrifugal force of the earth whirls us again into the presence of night, we shall once more behold our companion worlds as they journey in shining splendor upon their eternal rounds.

Kearney, two years afterwards, at Faneuil Hall, said:

"I walk the earth at mid-day. I find a vast expanse of blue heavens, unrelieved by the sparkle of a single star; but I know that Mars still holds his course, that Venus still wheels through space, that Jupiter and Uranus are flashing in the heavens, that the blazing belt of Orion, and the bright and gliding gleam of the North Star are all there, and it is thus with a movement of this kind. We know the workingmen are as true as the stars in heaven, and will, when called upon, exhibit themselves in beauty, in majesty and in power."

The *Alta*, of August 8, 1878, said, editorially:

Kearney had frequently referred to the fact, in mitigation of his ungrammatical utterances, that he could have speeches written for "two-and-a-half," while an honest man was above price. If Dennis had paid anybody two-and-a-half for the speech delivered at Faneuil Hall, he has a good cause of action against the person who took his money for it, for he leaves the great man before the public in the position of a purloiner of other people's ideas and language—a mean, contemptible literary thief, an impostor, and a trickster—a crime not differing in degree from that practiced by midnight robbers. The scribe who prepared the speech—presumably the "special correspondent" who hawked around to the Boston papers a report of the interview between Butler and Kearney—deliberately stole the opening and close from the speech delivered by Hon. Thomas Fitch, in this city, on the 21st of June, 1876, at a meeting for the ratification of the nomination of Hayes and Wheeler. The phrase "lesser than Macbeth, yet greater," has peculiar significance in that speech, which it lacks in the adaptation of Kearney's speech-maker, and which would not fit in a speech made by Colonel Ingersoll, who has been erroneously credited with the remarks by the other newspapers. The Ingersoll speech is a marvel of glowing eloquence, but to Tom Fitch belongs the credit of the apposite quotation from Shakespeare and the gorgeous description of the personality of the man of the Republican party. We present the speech of Hon. Thomas Fitch and the theft of Dennis Kearney in parallel columns.

Fitch's tribute was in these words:

"But before I speak of the principles presented, and the candidates offered for our support, let me give brief utterance to the feeling that fills the hearts of many thousands of earnest Republicans who dwell in this Golden State, and who—from among the Northern Sierras, and by the summer seas, from treasure-veined hills and waving plains, and evergreen forests and busy streets—send a message of love and greeting to him who is 'lesser than Macbeth, yet greater,' to the fiery, unconquerable Rupert of debate, the chivalrous, the white-plumed Navarre of the platform, the sagacious statesman, the great-hearted leader, the gifted, the gallant, the glorious Blaine.

"The knightly hearts that dwell by this Western sea throb with uncalcu-

lated response to his manly spirit, and across mountains and desert we bid them take heart of hope, for there shall come another day when every prize he has earned shall be his own. And we say this, not that we honor our chosen standard-bearer less, but that we love our great chieftain more."

And this is Kearney's:

"In order to beat responsive to the popular will and expression that went up from this meeting tonight, when a certain man's name was mentioned, I feel like bringing a message of greeting and love to a man who is lesser than Macbeth, yet greater, to that fiery and incomparable Rupert of debate, (a voice, "Good boy,") to that chivalrous and white-plumed Navarre of the rostrum, the gallant, gifted, glorious Butler. (Great applause and cries of "Say it again.") We bid him take heart and hope, that he will receive the reward from the workingmen of Massachusetts he so justly merits for his bold and out-spoken action in behalf of down-trodden humanity." With the remark, "It's getting hot, Mr. Chairman," Mr. Kearney at this point took off his coat, and loosened his cravat, amid the loud cheers and laughter of the audience. Continuing, he said: "I am sorry, friends, that we are not rich enough to be able to hire Beecher to knock the bottom out of hell." (Laughter.)

The conclusion of Fitch's speech was also stolen by Kearney and delivered in Faneuil Hall as his own peroration.

In September, 1863, an editorial appeared in the Virginia City (Nevada) *Union*, of which Mr. Fitch was editor, sharply criticizing the *Enterprise*, of that place, for defending the action of Governor Seymour, of New York, in addressing a multitude of rioters as "My friends." The *Enterprise* rejoined with a bitter editorial attack on Mr. Fitch. For this editorial, Mr. Goodman was challenged by Mr. Fitch, and accepted the challenge. The parties were to meet in Six Mile Canyon and fight with navy revolvers. Mr. Fitch and his seconds were on the ground half an hour before the time appointed. Mr. Goodman and his party were arrested while taking an early breakfast at a restaurant in Virginia City, and this was followed by the arrest on the duelling ground of Mr. Fitch and his party. All were placed under bonds to keep the peace in the State of Nevada. The *Enterprise* a few days afterwards published another personal assault on Mr. Fitch, and the latter gentleman rejoined with an exceedingly bitter personal attack on Mr. Goodman. Mr. Goodman thereupon challenged Mr. Fitch to meet him in the State of California. The challenge was accepted and the parties met in Stampede Valley, Nevada county, California, near the State line. The weapons used were navy revolvers, the distance ten paces, and the parties fired simultaneously. The bullet of Mr. Fitch passed through the coat and vest of Mr. Goodman without touching his skin. Mr. Fitch was shot through the right knee, the bullet grazing the bone but not shattering it. The parties afterwards became warm personal friends. It was learned subsequently that Mr. Fitch was not the author of the original article in the *Union* that excited the ire of the *Enterprise*, and that Mr. Goodman did not write or inspire the attack on Mr. Fitch. Both gentlemen, as editors of their respective papers, assumed the responsibility for articles written by subordinates.

One of the happiest phrases Fitch ever threw off was in a private letter to us in the summer of 1900. In referring to our effort to revive the project to build a monument to Baker in Golden Gate Park, San Francisco. Mr. Fitch, after stating one of the reasons why the work languished, said, "Baker ought to have a great monument" (we thought the word "great," so often misapplied, was in good place here)—"in Oregon"—(we had no doubt he was going to stay in San Francisco, but accepted Oregon because that was the state that sent him to the senate) "at the mouth of the Columbia" (now we yielded to the poetic idea as the writer rose superbly) "on the heights above Astoria" (then closing his fine conception) "where it could be seen and saluted by every passing ship."

The words themselves are a noble memorial: "Baker ought to have a great monument—in Oregon—at the mouth of the Columbia—on the heights above Astoria—where it could be seen and saluted by every passing ship."

F. P. TRACY.

Frederick P. Tracy was city attorney of San Francisco for some two years —1857-59. There were no regular terms then, the board of supervisors appointing the incumbent. He practiced law in partnership with F. A. Fabens (Fabens & Tracy). There are many of our oldest citizens who assigned him to the very first rank of the early bar, but they estimated him from his powers as a public speaker. The profession accorded him no such high place. He was a good lawyer, but not at the front. He was not trained for the bar, and his legal education was defective. He took up the study comparatively late in life. Indeed, he took up the study after he came to this State, when he was about thirty years old. He was a strong man, but not strong enough to master a natural taste for stimulants, and for this reason he turned away from the calling to which he had been consecrated and which he had followed for some ten years, that of a Methodist clergyman. The spiritual nature was never more than temporarily overthrown. He was an orator of a high order. He had a large figure and spoke weighty words. He addressed the moral sense of men. He loved the great poets, too, and could repeat from memory the whole of "The Lay of the Last Minstrel." One of the fathers of the Republican party in California, he was the most notable "stumper" for his party, next to Baker, in the campaigns of 1856 and 1860. He went to Washington City to see Lincoln inaugurated in March, 1861. He died in the East in March, 1862, and his remains were brought back to San Francisco, the funeral obsequies being in old Platt's Hall on March 23, 1862. His wish, expressed in writing, was carried out: "Let my funeral service be conducted by a minister of the Methodist church who never apologized for slavery."

Tracy was born in Windham, Connecticut, and was graduated from some New England Methodist college. He was about 56 years of age at his death, in 1862. He was a California pioneer, arriving at San Francisco in August, 1849, on the same steamer with John Currey and Annis Merrill. A daughter of Mr. Tracy became the wife of the veteran public school teacher, John Swett, who was state school superintendent from January 1, 1863, to December 1, 1867.

Tracy left no estate, but his many friends erected to his memory, in Laurel Hill, a monument which is one of the noblest objects which the eye beholds, and which no visitor should fail to look upon, when called for the first time, for whatever purpose, to repair to that famed spot, where the virtues of our great men are exhibited in marble, and their frailties, with their mortality, covered with the blooms of earth.

LAWYERS SELECTING JUDGES.

The lawyers of San Francisco, that is, 229 of them, got together in a public hall in 1879, to agree upon twelve men of that bar for Judges of the Superior Court, which court, by virtue of the new constitution of that year, was to be organized in the following January. The idea was that the conventions of the two great political parties, which had not yet convened, would follow the choice of this meeting of the bar, nominating judges for the new court.

Hon. W. W. Cope, who had been a Justice of the Supreme Court from September 20, 1859, until the remodeling of the Court in 1864, presided over this bar meeting. (Judge Cope was the gentleman, then living in Amador, who defeated Judge Terry for the Democratic nomination for Supreme Judge in September, '59.)

There was of course much able and witty talk at this gathering. Some one moved that each person present be assessed so much to pay the cost of the hall and printing. Some one else said that certain gentlemen had already advanced money and it would not be right to include them in the assessment. Some time being wasted in the discussion, ex-attorney general, Frank M. Pixley, jumped up and said nervously, in his loud, sharp voice, "Mr. President, I move that two men pass the hat, and that we stop this G—d d—d foolishness." Henry H. Reid promptly seconded the motion. It was carried, and the hats were passed, resulting in too much money being secured, but no provision was made for the surplus.

As of historic interest we give the whole vote cast at the meeting, the twelve gentlemen first named being declared the choice of the bar for Superior Judges:

W. P. Daingerfield	193	J. M. Seawell	58
John F. Finn	155	Paul Neumann	56
W. H. Fifield	148	Robert Ferral	45
O. P. Evans	143	John T. Humphreys	29
John Hunt, Jr.	142	J. V. Coffey	28
T. K. Wilson	136	Davis Louderback	27
J. C. Cary	123	E. H. Rixford	25
S. H. Dwinelle	119	Charles Halsey	24
R. Y. Hayne	116	T. H. Rearden	23
S. S. Wright	115	D. T. Sullivan	22
T. W. Freelon	114	John Haynes	21
J. M. Allen	107	James M. Taylor	20
Columbus Bartlett	106	F. P. Dann	19
H. D. Scripture	98	J. R. Brandon	19
C. B. Darwin	87	J. A. Waymire	19
D. L. Smoot	80	H. L. Joachimsen	18
Robert Harrison	67	J. L. Crittenden	16
John Proffatt	15	William Crosby	4
R. Guy McClellan	15	George E. Harpham	4
G. N. Mott	11	D. J. Toohy	4
J. W. Harding	11	F. F. Taylor	2
P. B. Nagle	5	P. B. Ladd	2

Of the twelve lawyers first named, those who secured the nominations of their respective parties and were elected, were William P. Daingerfield, O. P. Evans and T. W. Freelon, Democrats, and T. K. Wilson, J. C. Cary, John Hunt, Jr., J. M. Allen and John F. Finn, Republicans. The other four Superior Judges elected at that time were M. A. Edmonds, Republican, who had received no votes at the bar meeting, and three Democrats, Chas. Halsey, Roberts Ferrell, and Jeremiah F. Sullivan, of whom the last named received no votes at the bar meeting. The men who received votes at that meeting and who in after years became Judges of the Superior Court, were R. Y. Hayne, J. M. Seawell, J. V. Coffey, T. H. Rearden, D. J. Toohy, and James A. Waymire.

A. P. CRITTENDEN.

Alexander Parker Crittenden was appointed to the United States Military Academy (at West Point) from Kentucky. He was a cadet there from July 1, 1832 to July 31, 1836. He was a native of Kentucky. He was graduated on July 1, 1836, and was promoted in the army to second lieutenant, First Artillery, on the same date. He resigned September 30, 1836. He was

assistant engineer of the Baltimore and New York (Pennsylvania) Railroad in 1836-7, and held the same place on the Charleston and Augusta Railroad in 1837 and 1838. He was a counselor at law at Brazoria, Texas, from 1839 to 1849, when he came to California and lived in this State for the remainder of his life, except a few years spent at Virginia City, Nevada, in the sixties. He was a member of the assembly of California at the first session, 1850, from Los Angeles. He arrived there a few months before the first general election in 1849. He determined to leave the place and locate at San Francisco. He was out of money and set out to make the long journey of nearly five hundred miles on foot. A few miles from Los Angeles he was met on the road by an old friend, who had been an army officer at West Point, named Coutts, who now resided at Los Angeles. Coutts took him back to his home, furnished him with means, and Crittenden was shortly afterward elected to the assembly. Then, instead of having to walk, he traveled to Sacramento, the State capital, at the public expense, his mileage amounting (at eighty cents a mile, counting both ways) to $1136.

He is especially referred to in our article on the adoption of the Common Law. He drafted many of the statutes passed at the first session.

Removing to San Jose he represented Santa Clara county in the assembly in 1852, and again proved a useful member.

While he was a cadet at West Point, he and some other students were disciplined for some frolic which they indulged in, and were pursued by a guard and surrounded. Crittenden said, "Let us cut our way out; that is the military way." But his advice was not followed and they were all placed under arrest, and after trial were all expelled. Crittenden went to Washington City and sought the aid of his distinguished uncle, John J. Crittenden, then United States senator for Kentucky, to be restored to the Military Academy. His uncle told him that he was hardly on speaking terms with the President. The young man then went himself to the President, who was General Jackson, and the President, after hearing his story said, "You are the kind of material we want in the army. You go back to West Point, but on your way tarry a day or two at New York city, and when you get to West Point there will be an order there to re-admit you." And so it was, and Crittenden went through the four years' course.

When Crittenden returned to San Francisco from Virginia City in 1866, he formed a law partnership with Samuel M. Wilson. The distinguished firm of Wilson & Crittenden conducted a great business until the death of Mr. Crittenden in November, 1870.

On November 7, when Mr. Crittenden's death was announced in the courts of San Francisco, John W. Dwinelle made the motion to adjourn in the Twelfth District Court, and paid an eloquent tribute to the memory of Mr. Crittenden. He spoke of him as one of the ablest jurists in California, a firm friend, and amiable gentleman. At the conclusion of his remarks Judge McKinstry said:

"I have known Mr. Crittenden a great many years. I have had perhaps peculiar opportunities for observing and admiring his integrity of purpose, his boldness of conception and thought, the vast resources of his mind. To say that in this man the elements were so mingled as to form a perfect character would, under the circumstances, be worse than panegyric. It would be unjust to ourselves, it would be unworthy of him; for no man despised mere exaggeration more than he did. I cannot, however, but bear witness with all who knew him, that this was an extraordinary man. All here were accustomed to his forensic manner. His clearness of statement was so remarkable as that not infrequently it rendered all argument unnecessary. His matter was often too important to admit of ornamentation, but at times he was eloquent in the very highest sense, and he was always forcible and effective. He disdained every tortive approach and advanced at once the main idea involved in an inquiry; accepted it in all its significance if possible—and moulded it to his purpose. He rarely met with an adversary who was stronger than himself. He was too magnanimous to press an undue advantage upon one weaker. For while he was positive in the assertion of his own opinion, he respected the positive opinions, honestly entertained, of those who differed from him. His natural quickness and aptitude for reasoning were rendered more acute by training at the Military Academy at West Point, whence he was graduated near the head of his class, and by a long and active career in the practice of law; so that his inferences had become almost demonstrations, and the trenchant blade of his logic hewed its way to a conclusion with a force which was irresistible. As a lawyer, as has been well remarked by Mr. Dwinelle, he was not so familiar with mere cases as many others, but his mind was imbued with the philosophy of his profession as presented in the great principles which are taught by the masters among the civil and common-law writers. But profoundly versed as was Mr. Crittenden in the peculiar lore of his own profession, his acquirements were not limited to its demands. It is said by those competent to judge that he was deeply read in the pure mathematics, and that he was greatly interested in the progress of the physical sciences, having far more than a superficial knowledge of some of them. To a certain familiarity with the ancient classics, he added a proficiency in several modern languages, and was generally and thoroughly acquainted with the poetry and polite literature of our own tongue. But it was in the hours of relaxation from his labors, and when his reserve had melted under the genial influence of an enlightened social intercourse, and he gave way to his gentle, kindly, cheerful humor, that one fully recognized how much of attractiveness, there was in this talented and cultivated man. Generous to the extreme there was no sacrifice he refused in order to subserve the interests of a friend. So that while all who knew him admired the eminent jurist and the accomplished orator, those who knew him best loved him best."

WILLIAM T. WALLACE.

Hon. William T. Wallace, a member of the present Board of Police Commissioners of San Francisco, and who has been attorney general of the State, Superior Judge of San Francisco, and Chief Justice of the State Supreme Court, was born in Lexington, Ky., March 22, 1828. He was well-connected and well-educated, and was admitted to the bar in his native state and practiced there for a time. He arrived in California in 1850, and located

Wm. T. Wallace

at San Jose, where he married a daughter of Hon. Peter H. Burnett, our first Governor.

Wallace, who long ago came to be a man of great physical weight and stature, was at that time quite thin, and consumptive, weighing only 140 pounds. Judge Hester, district attorney of San Jose in 1852, resigned to take the place of District Judge, and Wallace was appointed District Attorney. He traveled with the judge to the county seats of the four counties comprising his district. He was district attorney for one year and went to each county seat six times. His first substantial success at the practice was made about 1853, when he induced the obstinate administrator of a certain large estate to pay over to a daughter of the deceased, her portion of the inheritance. This was $75,000, and she, the daughter, paid Judge Wallace a fee of $15,000. A client of Judge Wallace, a prominent physician of San Jose, had married the widow. The estate lay in another county, the administrator would not for a long time turn over the daughter's portion, and the County Judge declined to make the order usual in such cases. Judge Wallace managed to get the administrator to pay over without the aid of legal process.

He was attorney general from January, 1856, to January, 1858. (The terms of State officers were then for two years.) He was a Justice of the Supreme Court from January 10, 1870, to January 1, 1880, being Chief Justice from February 24, 1872, to January 1, 1880, a period longer than that served by any other Chief Justice, excepting the present incumbent, Chief Justice Beatty.

Judge Wallace was elected by the Democrats of San Francisco to the assembly, to fill a vacancy, at the session of January-March, 1883. He was elected by the Democrats in the fall of 1886 a judge of the Superior Court of San Francisco, and served a full term of six years. He was presiding judge of the court for the year 1891. He was re-elected in the fall of 1892 by the Democrats and Non-Partisans, and served a second term, ending December 31, 1898. In 1899 Mayor Phelan appointed him a member of the first Board of Police Commissioners under the charter of San Francisco, adopted in 1898. He is now serving on that board. Judge Wallace is a member of the Board of Regents of the State University, and his term will expire in 1902.

The ex-Judge is a millionaire and has a numerous posterity. The well-known San Francisco lawyer, Ryland B. Wallace, is his son.

In December, 1887, this distinguished man, then a Judge of the Superior Court of San Francisco, gave us some of his memories of our early judges and lawyers. We quote him as follows, from our notes taken at that time:

> Murray was unquestionably the greatest man who ever sat on our Supreme Bench. But he never studied any. Had he possessed the industry and patience of Judge Field, he would have become another Mansfield (Mansfield's family name was Murray). He had a good voice and fine person, the portrait extant of him being little more than a caricature. He had remarkable alertness of mind and would catch a case with a swiftness and breadth of grasp which I have seen no other judge exhibit. Without having examined the transcript he would

yet be able to correct counsel in statements of evidence. He would in some way, early in the oral argument, catch the "corner facts," to which all others in a case must bear more or less fixed relation, so that when there was any material misstatements made by counsel, there was a disturbance sensible to his subtle mind.

His opinions were written on the spur of the moment with no forethought or effort, often on the flyleaves of transcripts. They still are sound authority and often cited.

Murray drafted the bill which passed the legislature, but which Governor Weller vetoed, to prohibit gambling. I think he hoped thus to have a barrier raised between him and his great vice. His bill made it a felony to conduct a faro bank either as owner or employe (dealer), while patrons of the game were only declared guilty of misdemeanor. Governor Weller, a man of strong common sense, vetoed this bill in words which I think I can almost exactly recall: "This bill," he said, "makes too great a distinction between gentlemen who sit on opposite sides of the same table."

The father of Charles T. Botts perished at the burning of the theater in Richmond, Va., in 1811. He was one of the counsel on the trial of Aaron Burr, and his speech on the occasion shows the same general cast of mind that his son, the California judge, possessed. When the latter was appointed Judge of the Sixth Judicial District, comprising Sacramento and Yolo counties, he called upon Judges Murray, Burnett and Terry, of the Supreme Bench, in the chamber of that tribunal, when, court having just adjourned, Judge Botts was tendered by the dignitaries named, their congratulations on his appointment. These he received with characteristic self-possession. "I will try to do my duty, but it is quite likely," he said, "that you gentlemen will overrule me sometimes. We can't expect the Supreme Court to be *always* right."

You remember Baker's hit at Judge Botts? The Judge in the State campaign of '58 edited a Democratic paper, in which he paid a great deal of attention to the Republican orator, not assailing him personally, however. In one of his open air speeches, toward the end of the contest, Baker took occasion to return the compliments of the tireless editor with interest. "This Botts family," he said, among other things, "is a great family. It has great talents and great eccentricities. John Minor has all the talents and Charles T. all the eccentricities."*

Judge Botts was, at the end of the fragmentary term for which he was appointed, succeeded by Hon. John H. McKune, who had defeated him at the fall election of 1858. The Sacramento bar gave Judge Botts a dinner on his retiring from office, on which occasion the thought was made prominent that the fate of a judge at a popular election is no criterion of his merit—that it is but a doubtful compliment to say of a man in ermine—"He is a *popular* judge."

With Colonel E. D. Baker I was very intimate. My home was at San Jose while he was at this bar, and when I visited San Francisco I sometimes went to Baker's house by his invitation. I was associated with him in quite a number of cases in different counties, among them the Peralta will case and the Seale murder case. This latter was tried at San Leandro, then the seat of justice of Alameda county.

Seale was a brother of H. W. Seale, and killed a man named Shore in a land dispute. Baker, James A. McDougall and I defended Seale on an indictment for murder. Wm. Van Vorhees was the district attorney, and associated with him for the prosecution was Edward Stanly, uncle of Judge Jno. A. Stanly. We called him, as we did Baker, "'Colonel,'—he had not yet been military

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*John Minor Botts, elder brother of Charles T., was a Virginian statesman of distinction, and of the same political faith as Baker—first a Whig, and, after that party dissolved, a Republican.—Editor.

governor of North Carolina. The accused had killed Shore by shooting him with a pistol, and the deceased had struck and slightly wounded Seale with an axe. The point was one of time—whether deceased used his axe before or after he was shot.

There was but one witness for the prosecution, and he testified that Shore did not use the axe until after defendant had shot him, and then by an ascending stroke, he having his hand resting, as he was shot, upon the perpendicular axe handle. For the defense there was also but one witness, and he an illiterate man, who testified that deceased stood by his axe in the same position as placed by the other witness, but that he used the axe before he was shot, raising it and bringing it down upon the defendant. The defense was enabled to show that the hat of the accused was cut in front by a sharp weapon, as also his forehead.

Van Vorhees opened and Stanly closed for the people. The former, who was an effective speaker, concluded his address to the jury with the words: "Gentlemen, if the prisoner is not guilty, the State does not desire his blood." Baker rose at once, and repeating these words, made a most masterly speech. He spoke for two hours and a half, using these words of the district attorney as a text, which by frequent and fervid repetition, he made to run all through his splendid address. All that he said sprung from these words and related back to them, reminding me now, as I think of it, of a beautiful carpet in which there is one striking figure as a center piece, and to which all other parts have relation. That Van Vorhees could have intended to give Baker such a cue is out of the question, as the two men did not like each other. The defendant was found not guilty.

On this trial, Colonel Stanly became so incensed at Baker that he desired me to bear to him an unfriendly message. The tragedy from which the trial resulted occurred where two fields adjoined, one partly an open field, the other entirely enclosed. One of Stanly's questions was, "if a certain thing testified to happened in the open enclosure." Baker asked the court to have Stanly explain what he meant by an "open enclosure." Stanly was nettled by the advantage taken of this slip and made an ill-natured reply. Once or twice thereafter, Baker made perhaps too fine objection to Stanly's examination, and when the trial was ended, Stanly's ire had mounted to a high pitch. But Judge Wallace refused to bear his message to Baker, and reminded him that he (Stanly) and Baker had always been close personal and political friends. The matter went no further.

Baker always was possessed of the idea that his forte was military leadership. He said that his place was at the head of an army.*

I think, of course, with all his friends, that he was mistaken in this. How common such an error is! Baker, the brilliant orator, envied the brawny, commanding will of Broderick, while the latter deeply lamented his inability to talk like Baker.

As a speaker, I never heard of Baker's making a failure. He couldn't fail. He had so much knowledge, such wide reading, the most wonderfully retentive memory I ever knew a person to possess, and the classics, modern and ancient, were an open book to him. He could make a great speech impromptu, and then dictate it to a reporter almost word for word.

You will remember Miss Annie A. Fitzgerald of Santa Clara, whose poetical effusions used to be seen in the press occasionally in the fifties and sixties. On a professional visit to San Jose, Baker once came into my office, and noticing some verses of this lady on my table, read them and remarked that they were

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*He said the same thing to the Rev. and Hon. Samuel B. Bell. "Whatever I may have accomplished as a speaker or lawyer," said he, "is as nothing compared with my possibilities as a soldier. I have often talked with eminent military men—graduates of West Point, and I feel that I know the art of war better than any military captain whom I have met."—EDITOR.

pretty and poetic. In allusion to a habit of his, I suggested that he might find occasion to quote them in one of his speeches. He said he might do so. I told him to take the slip along. "No," he said, "I know them." When I learned that he had never seen the verses before, I doubted his ability to repeat them. He then as I held the paper, repeated them word for word. I forget the subject, but I think there were as many as six stanzas, of four or six lines each. Some five or six months after this, I told the circumstances to Milton Williams, a San Jose attorney, and it so happened that Baker came in while we were yet talking about him. He was in a linen ulster, having just arrived by stage from San Francisco. I spoke at once of what I had been telling Milton Williams, and Baker said, "I can repeat the verses now; give me the first line." I held the printed slip, which all these months had been on my table, and read the first line, whereupon Baker repeated the entire poem, word for word."

Baker's visit to San Jose, now referred to, was to take part in the case of the Peralta will, before Judge Hester, of the District Court. I was also associated with him in support of the will in this case. We lost the case, and an incident of it will furnish one of the rare instances of Baker's loss of temper, and further serve to exhibit his wonderful memory. On rising to address the jury he first paid to Judge Hester a compliment for his fairness and ability. So eloquent, felicitous and graceful was this tribute, that he seemed to be throwing over the shoulders of the Judge a garland of fresh flowers. But, after we had lost the case and were moving for a new trial, the judge, in settling the bill of exceptions, kept ruling out what we wanted in, and we saw that our motion for a new trial would inevitably be denied. Baker became incensed at this, and, addressing the court, said: "Your Honor, in my address to the jury on the trial of this case, I took occasion to use these words." And he then repeated his fine encomium on the Judge, just as I had heard him utter it first, and then added: "I desire to take it all back—*all back.*"

And in this connection, I may say that Baker was *always* circumspect and chaste in speech. I saw him in so many different situations and places, public and private, that any fault of his in this respect must have been noticed by me. But I never heard him utter a sentence on any occasion that might not have been spoken to the gentlest lady in her parlor.

While depreciating himself as an orator, I think this was simulated. He used to tell me that he thought he stood perhaps at the head of the third-rate orators in the United States. To his mind, Sergeant S. Prentiss was the great master. You tell me that he declared to the late Major Tompkins of this bar that he "couldn't hold a candle to Prentiss as an orator." He said as much to me, often. Prentiss is the only orator of whom I ever heard him break into eulogy. Clay, whom I regard as one of the greatest of orators, didn't seem to have excited Baker's admiration. I have seen Clay, in my boyhood, do things on the stump that even now impress me as wonderful. Baker's sentences were full of beauty, and read grandly. Now, Clay's words were almost commonplace. If you should read a report of one of Clay's speeches, you would say, "That is just what he said, but what is it that impressed me so when he said it?" Clay's voice was full of music and penetrating power, and his strong personality overcame you. I especially recall one scene of Clay, which I pictured to Baker. It was at Lexington, Kentucky, his Ashland home being near by, and Clay having just returned from Washington. He was received by the populace with most extravagant demonstrations of delight—they had met him on the road, removed the horses, and drawn his carriage into the city. When the multitude, hoarse from cheering, had become quiet, Clay calmly surveyed it a moment, then taking out a snuff-box he always carried, said, "Fellow Citizens, I believe I will take a pinch of snuff." So doing, he brought out a large silk handkerchief, which he used with a loud report. Then, very deliberately at first, he proceeded to address the throng, and soon all were spell-bound—he was making one of those overpowering off-hand speeches such as only he could make.

I said I told this to Baker. He did not appear to be much surprised; he said, "That's like Clay." "Mr. Webster," he observed, "would not have done such a thing. He had too much good taste." Then he added, thoughtfully, "If Webster *had* done such a thing, he could never have recovered from it."

That was just the point—Clay *did* recover from it.

Yes, Baker believed that Sergeant S. Prentiss was, beyond peradventure, the greatest orator this country ever produced.

On December 8, 1873, Mr. Henry E. Highton, of the San Francisco bar, sent to a local paper a letter signed "Publicola," in which he strongly urged the election of Chief Justice Wallace to the United States senate. This letter merits notice for its discussion of two interesting points advanced against the propriety of the election of Judge Wallace. These two objections were, first, that by reason of his judicial office the judge was constitutionally ineligible; and, second, that it would be a breach of propriety to transfer him from the supreme bench to the senate. The first point was based on Section 16, of Article 6, of the State constitution: "The Justices of the Supreme Court shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

Mr. Highton argued that United States senators are federal officers; that their qualifications cannot be prescribed by the states; that the federal constitution is exhaustive and exclusive on the subject and there can be no valid state legislation thereon; that the clause quoted from the State constitution was designed simply to prevent judicial officers from holding executive or legislative *state* offices. He further cited the case of Judge Trumbull, of Illinois, who was elected a United States senator, while on the bench, against a plain provision in the constitution of that state, and who was admitted to his seat.

As to the propriety of transferring a judge to the senate, Mr. Highton contended that so far from it being a breach of propriety, in the case of Judge Wallace, there was a peculiar fitness in it. He thus expressed himself on this head:

"By the very exigency of his position, he had been, for some time at least, mainly occupied in the consideration and solution of matters of private right, and withdrawn from all active interference with the executive and legislative branches of the State government. What better preparation could be devised for useful membership in the senate of the United States? That body is conservative in its character, quasi judicial in the words of Joel Tiffany, compelled to reconcile the jarring interests of different states, the regulator of the last resort of our relations with foreign governments, which demand the exact application of the principles of international law, and invested with the highest judicial functions and powers in cases of impeachment. Surely it cannot be honestly asserted that the mind and training of a lawyer, the discriminating habit of a judge, and the incorruptibility of a gentleman, are necessarily disqualifications for the performance of these delicate and complicated duties.

Mr. Highton concluded by alluding to the duties of the governor of a state, his relations to the legislature etc., and declared that in the candidacy of a

governor for the United States senate there was a positive indelicacy which was inexcusable.

JOSEPH W. WINANS.

The late J. B. Townsend was very tiresome in trying his cases, and we told in our book of 1889, that upon one occasion he answered "ready" to a case before Judge E. D. Wheeler, of the old Nineteenth District Court, San Francisco, the Judge, addressing the other lawyers present, said, "No other case will be reached today, gentlemen." Something very like this occurred in Judge R. F. Morrison's District Court in the same city in 1877. Joseph W. Winans, of whom a sketch appears in this History, was a fine scholar by general consent, and was by many accounted an orator. Many attorneys were in court on the occasion referred to, waiting for their cases to be called, it being law and motion day. Mr. Winans' opportunity came first, and it seemed that he would never stop. He would frequently pause as if about to sit down, but just as hope was brightest, he would resume. B. S. Brooks at length arose and said in his demure way, "Your Honor, do you think you will be able to hear any other motions today?" His Honor smiled (something Judge Morrison did not often do, although not a stern man at all) and said, slowly, "Yes, I think I will."

Mr. Winans' father, who almost became a centenarian, always lived in New York city. He was quite rich to the last, getting a start in the grocery business early in life, and investing in real estate. He put up a row of buildings after he was 90, and superintended their construction himself. When he was 92 or 93, he visited his eminent lawyer son in San Francisco. The lawyer was then over 60, but the *old* man would refer to him in conversation as his favorite boy. He desired Mr. Winans to break up here and remove with his family to New York city. "It would be a costly move," remarked the lawyer. "How much would it cost?" asked the father. The answer was, "To break up here entirely, and take my family and library and effects to New York city, and get settled there, would cost probably ten thousand dollars, father." "I will let you have it, Joseph," said the father.

Mr. Winans really entertained the proposition for some weeks, then relinquished it. The old man outlived his "boy" two years. Our bar leader died in San Francisco in 1887, aged 66. His father died in New York in 1889, aged 96, and leaving an estate worth two millions of dollars. If the dates had been reversed, the cultured lawyer would probably have gone to New York, indeed, and to the classic and romantic lands of which he wrote, and have fully gratified his taste for art.

Mr. Winans was not only a great buyer of books, but he spent a little fortune in the binding of them. He showed great nicety in this matter. And

this brings to mind some clever words by Irving Browne, editor of the Albany (New York) *Law Journal,* written in 1885. No man enjoyed them more than Mr. Winans. They now follow:

THE BINDING OF BOOKS.—To make the books suggestive of the contents: Thus, as to colors: One might appropriately dress military treatises in red, theological in blue, gastronomical in claret or salmon; books on magic in black; a history of pugilism in blue-black, instructions for actors and singers in yellow, and guide-books and travels in orange. One might bind *Lamb* in pea-green; the *History* of the *Friends* in drab; of the *Popes* in scarlet; and *Cicero de Senectute* in gray; while *Magna Charta* should always be preserved in violet; an account of the Crimean War in Russia, a history of the Barbary States in Morocco, accounts of the intestinal convulsions in vellum, works or Arboriculture in tree-calf; *Bacon* in hog-skin, biographies of celebrated women in muslin, statistics of the lumber trade in boards; a description of Saxony in sheep; and all love tales in plain calf with clasps; criminal trials should be in full gilt, and accounts of famous sculptors in marbled side and edges. Any history of the Baptists should *not* have sprinkled edges. All books relating to defective vision should be blind-tooled, and books about the deaf and dumb should be in quiet colors."

ARCHIBALD C. PEACHY.

It has never been known to more than a very few persons—and, indeed, it is not easy of belief—that David S. Terry once refused to accept a challenge to fight a duel, sent him by one whose station in life warranted its acceptance. But he did decline to fight Archibald C. Peachy. It was early in 1879, when the last constitutional convention, of which Terry was a member, was in session at Sacramento. There was no correspondence on the subject. Judge Terry, when he received the hostile message, simply told the bearer that he would not entertain it, because Mr. Peachy had become nearly blind. Mr. Peachy sent him word that he could see as well as he cared to, but nothing further came of it. The parties were friends, but Terry, in conversation with a number of gentlemen, had dropped a remark, half jocular, touching Peachy's private life, which even a sensational newspaper could hardly afford to print.

Mr. Peachy had been a member of the great pioneer law firm of Halleck, Peachy & Billings. He was well off. He was a very able man, and a fine-looking one—tall, straight, proud, dressing elegantly and tastefully, carrying a cane and wearing large gold-rimmed eye-glasses. He was a Virginian, born of an old aristocratic family at Williamsburg, October 8, 1820. He came to California in 1849, arriving at San Francisco April 1st. In 1852, April 5th, he fought a duel with James Blair at the Presidio. It was bloodless.

Mr. Peachy was a member of the assembly in 1852. He was in the senate at the sessions of 1860 and 1862, and was chairman of important committees. His old law firm owned Montgomery Block, and held the property down to the year 1872, when the partnership was dissolved by the death of General Halleck. On January 1, 1874, Mr. Peachy sold his one-third interest in Montgomery Block to General Halleck's widow for $72,500. He died on April 17, 1883.

B. F. WASHINGTON.

B. F. Washington died at San Francisco January 22, 1872. He was born in Jefferson county, Virginia, in 1820, was admitted to the bar in Virginia, and practiced there some years. He came to California in 1850, and in that year was elected the first recorder or police judge of Sacramento city. At the end of his term he resumed law practice in Sacramento. In 1852 he became editor and part proprietor of the Democratic *State Journal* at Sacramento. He became also part owner of the *Times and Transcript* in the same city. He fought his duel with Washburn when he was editing that paper. Washington was collector of the port of San Francisco under President Buchanan, 1857-1860. He was editor of the San Francisco *Examiner* from June, 1865, until his last illness, six weeks before his death. In 1868 he was a member of the Board of Tide Land Commissioners appointed by Governor Haight, his term lasting four years. He left two sons and two daughters, who are still living. He was a large man, over six feet in height. He had decided gifts as an orator and a poet. His death occurred when he was fifty-two years old, January 22, 1872.

The duel with Washburn (C. A.), who was editor of the *Alta-California*, took place on the San Jose road near the bay shore on the morning of March 21st, 1854. The weapons were rifles, distance fifty paces. The seconds of Washburn were Benjamin S. Lippincott and George Wilkes. Those of Washington were Phil. T. Herbert and J. Watson. At the first fire, owing to some misunderstanding in regard to giving the word, only Washburn fired. Washington having handed his weapon to one of his seconds, who in his excitement, fired it in the air. On the second attempt Washburn's piece was accidentally discharged in the ground. They fired again without either being injured, Washington's bullet passing through Washburn's hat. A fourth exchange of shots was had without harm, but the weapons were loaded again, and now, on the fifth exchange, both parties fired simultaneously. Washington was unhurt, but Washburn had the point of his shoulder-blade shattered, the ball lodging in his back. It was a serious wound, but he recovered. He became United States minister to Paraguay, by appointment of President Lincoln.

EDWARD J. PRINGLE.

Mr. Pringle, of whom a notice appears elsewhere in this History, before commencing practice spent a year traveling over Europe, with the purpose of illustrating past and future reading.

He carried a letter of introduction from Professor C. C. Felton, of Cambridge, to Mr. John Forster, the editor of the London *Examiner*, who invited him to a dinner, which was ever memorable to him. The party consisted of Carlyle, Dickens, Ralph Waldo Emerson, Forster and himself. Carlyle did nearly all the talking and found ready listeners. After dinner Carlyle turned around to the fire-place, put up his feet against the chimney in true American style, and smoked a long clay pipe. He talked about the pseudo reformers—"*kicking up tranquility*," as he phrased it—in Ireland. He was very bitter against the Irish agitators, and talked so much about the musket as being the best cure for the complaint that Dickens laughed, and called it musket worship. The great American philosopher listened to Carlyle with much interest and spoke but little. Emerson and Carlyle not only had the kinship of genius, but were warm personal friends. Some years later, in welcoming some new triumph of Emerson's brain, Carlyle exclaimed: "Here comes our friend Emerson with news from the Empyrean." Dickens, who took advantage of the lulls in Carlyle's talk, told of the efforts he was making with Miss Burdett Coutts to send the abandoned women of London to the colonies. He expressed great surprise that the prospect of leading honest, comfortable lives as wives in the colonies failed to induce them to fly from the misery of the London streets, whose glare and glitter seemed to hold them in permanent fascination.

Some years before his death, Mr. Pringle told us of many events of great historical interest in European history. In the years 1847 and 1848 began the great political revolutions. Mr. Pringle saw Louis Philippe at the Tuileries during his last fete days, in July, 1847. In the spring of 1848 the rising political storm on the continent inflamed the Chartists in England, whose threatened demonstration in London in April, 1848, caused widespread uneasiness. Mr. Pringle ran over from Paris to see the row, but the loyalty of the people of England rose with the occasion. It was interesting to see the great actress of the day, Rachel, in the two counter tides. Mr. Pringle saw her called out in Paris to sing the "Marseillaise," kneeling to the tricolor in a perfect storm of republican shouts, and he saw her called out in London to sing "God Save the Queen' in a tempest of loyal frenzy.

He carried letters to Switzerland from Professor Agassiz. One of the letters was to an innkeeper on the high Alps, where Agassiz had spent some seasons in marking the course of the glaciers. The party of young men, four in number—one of whom was a cousin of Ralph Waldo Emerson—were delighted with the hospitalities of the host and his pretty daughters.

Some years after it transpired that the host had selected these pretty daughters (?) to add to the charms of his house. They had been carrying on, for many years, robberies and murders of their guests. Under the floor, where our little party had been so agreeably entertained, were the bones of many travelers—the recollection of whose fate brings to mind the crimes of the Bender family of Kansas. Agassiz, it will be remembered, was born in Switzerland. To his letter to the Alpine innkeeper Mr. Pringle, no doubt, owed his life.

A very interesting case may be mentioned in which Mr. Pringle won a signal triumph, that of Montgomery vs. Bevans, decided by Judge Field in the United States Circuit Court. Montgomery, after whom Montgomery street, San Francisco, was named, was commander of the United States sloop of war Portsmouth, which entered that harbor in 1846, in which year Montgomery took possession of the town in the name of the United States. Under his command were two grown sons, whom he dispatched to Sutter's Fort in a small boat by way of the Sacramento River, accompanied by some sailors and carrying with them a considerable sum of money to pay off soldiers at the fort. They never reached their destination and never returned, and never since have been heard from; and their fate is still shrouded in profound mystery. A Mexican grant for which they had applied was issued to them just after their departure up the Sacramento. Commodore Montgomery, as the heir-at-law of his two sons, sued Bevans to dispossess him from the land granted. Bevans held under a second grant issued to him, on the theory that the Montgomery boys were dead when the first grant was issued. This theory Mr. Pringle successfully upheld, and his client prevailed.

Mr. Pringle's knowledge of the law was the product of long and patient study. He was a man of broad scholarship, pure and exact in his expression, and knightly in his bearing, both in and out of court. As was said of Coke: "No legal question could arise which he could not illustrate out of the stores of his learning," and like that great apostle of the law he delighted in good clothes, well worn, agreeing with Sir Edward that the outward neatness of our bodies might be a monitor of purity to our souls. He possessed excellent literary taste and was a critical judge of the fine arts. He was not the victim of any vice, and enjoyed the blessing of health to a remarkable degree.

——*THE EDITOR.*

San Francisco, Cal.

THE MEN OF THE FIRST ERA

MEN *of the* FIRST ERA

HALL McALLISTER AND HIS LINE.

He was not the ablest in all respects, but he united more of the essential qualities of the great lawyer than any of his competitors. Their variable radiance which now and then dimmed his steady light, only served to show that the prolonged sunshine is better than flashes of lightning.

The tide of his practice knew no ebb, from its first swell in the middle of the century to the end of his life in 1888, and it had an exceptionally extended range. His indefatigable industry in preparation, his patience in the elucidation of intricate facts, the remarkably thorough way in which he tried his whole case, and the well-known fact that he was, as we may express it, the lawyers' lawyer—being most consulted by other attorneys and by the bench—these distinctions lifted him to the first place among the advanced few.

No less a man than Reuben H. Lloyd, in the course of testimony which he was giving on the witness-stand some years before McAllister's death, observed that, in the matter concerning which he was then being interrogated, he had taken the advice of Hall McAllister and that it was his habit to advise with him in matters affecting him (Lloyd) personally.

E. D. Sawyer, who had been a District Judge, in addressing a jury in the old Twelfth District Court, April 21, 1875, took occasion to remark that he only knew of one lawyer who was equally good in all kinds of cases, and that was Hall McAllister.

John Garber, who has succeeded to first place—that is, who, while he is not equally good in all kinds of cases, is yet *primus inter pares* by general confession—said very finely of McAllister at the latter's death:

"I have good reason to know the man, for I was either with or against him in many important cases, and had excellent opportunity to know and appreciate his varied accomplishments. He was capable of infinite labor and was always equipped for every emergency. His intellectual capabilities knew no limit. His extensive reading and broad culture prepared him to illustrate, in a pleasing manner, any subject which presented itself. He, indeed, was a man who adorned every subject he touched. He was in love with his profession, and to it he gave his entire life and energy. Both in private and professional life he was kind-hearted, affable, and a most genial and charming companion."

Some enterprising dealer in that line, aware of the prime place held by McAllister in the mind and heart of the bar, issued, a year or so before the great lawyer's death, a very large engraved portrait of him, which he took around to the various law offices in San Francisco for sale. The portrait is to be seen on the walls of prominent attorneys today, and formed part of the office effects of leading lawyers who died after McAllister did—Creed Haymond, for instance. The favor with which the portrait was received was such as has rarely been accorded to the likeness of a living man.

Matthew Hall McAllister, the father of Hall McAllister, was born in Savannah, Ga., November 26, 1800. As he was the father, so was he the son of a distinguished lawyer. His ancestors emigrated from Scotland. After graduating from Princeton College, he prepared himself for the bar, to which he was admitted in Savannah. He there followed the profession for twenty-nine years. During the administration of John Quincy Adams he was United States attorney for the Southern District of Georgia. His father,

Matthew McAllister, had held the same office under Washington. Judge McAllister was for many years one of the most prominent public men in the Southern Empire State. Always a strong Democrat, he yet opposed with vigor the attempts at nullification in 1832. He participated in the fiery debates of that period, and threw all the weight of his influence and example in favor of the Union. For quite a number of years he represented Savannah in the legislature—first in the lower, later in the higher branch.

In 1845 he was the Democratic nominee for Governor of Georgia, and was defeated. In 1848 he was a delegate to the Democratic National Convention which nominated General Cass for President. In 1850 he removed to California. He was then fifty years old, an age far exceeding that of the average Argonaut of that day. His son Hall had preceded him and had become established in law practice in San Francisco. Judge McAllister practiced law with great success until he went on the federal bench. He paid a visit to Georgia in 1853. He found the legislature in session and about to elect a United States senator. The Whigs predominated and prevailed, but Judge McAllister, although he had fixed his residence permanently on the Pacific, received the Democratic nomination and his full party vote for senator. In 1855 the Judge was appointed by President Pierce the first United States Circuit Judge for California. His judicial opinions were reported in one volume by his son, Cutler.

In 1862 Judge McAllister resigned his place on the bench, having, at the age of sixty-two, greatly failed in health. He died three years later. His wife survived him some ten years and died in New York city. He had prospered in business and left a fine estate, consisting chiefly of improved city real estate, embracing among other parcels the property on Montgomery street, adjoining on the north Sherman's building. His mental powers gave way before he left the bench, but up to a year or so of his resignation, he was a strong man in mind and body. To quote Mr. H. E. Highton, who wrote of him at the time of his death, "He possessed in happy combination the shrewd practical sense, the keen and analytical power, and the strong moral feeling which characterized his Scottish ancestry, and the glowing imagination and the chivalrous honor, which grow out of aristocratic systems and ripen under tropical skies. His learning was both extensive and varied; his style, whether in speaking or writing, was rich and clear, his language apt and precise. His manners were of the old school—so gentle and so courtly that they won for him affection and commanded respect."

In the Eighth Volume of Howard's United States Supreme Court Reports may be found the case of Kennedy vs. the Georgia State Bank, argued by Judge McAllister, and in which he overthrew the giant Webster. Another of his unfading laurels was an opinion of his while on the bench, which was formally adopted by the United States Supreme Court.

Judge McAllister's sons were Ward McAllister, of New York city (of the immortal "Four Hundred"); Hall McAllister; Cutler McAllister, Hall's San Francisco law partner, who died while on a visit to Florida in 1879; Julian, a General in the United States army, who died a few years after Cutler, and Rev. F. M. McAllister, an Episcopal clergyman, who was the first rector of the Church of the Advent in San Francisco.

As a lawyer, Judge McAllister long survived in his son Hall, of lasting fame. His descendants are many, including the second Hall McAllister, son of the first Hall, and Elliott McAllister, son of Cutler, both now at the San Francisco bar. His mind is stamped on the jurisprudence of the State and Nation, and his honored name will live for generations.

Hall McAllister was born in Georgia, in 1826. He arrived in San Francisco in June, 1849, a year before his father came, and by way of the Straits of Magellan and Valparaiso. He took his place at this bar in August of that year, a novice among experienced men. He was a wary observer, in love with his calling, and entered the lists with that resolute purpose which if stubbornly adhered to, rarely fails to bring to the legal practitioner a fair measure of success.

That period of probation from which lawyers—even those of the brightest parts and promise—seldom find exemption, was with Hall McAllister exceptionally brief. Several favorable circumstances conspired with his native bent and energy of character to cut his probation short, and to launch him auspiciously into the full tide of practice. Of an honorable and talented family, courted by society, enjoying the affectionate help of a

father distinguished in his own profession, anxious and able to assist and advance him; of fine person, robust health, vigorous mind and a fixed ambition, he stepped into the arena of professional life with the air of one who feels he has a hold upon the future, and with the almost absolute assurance of success. It is most true that he owed much to fortuitous circumstances; much to paternal promptings and guidance, "which nursed the tender thought to reason, and on reason build resolve—that column of true majesty in man;" but it is just as true that even without such aids he was born to be what he became, one of the few unchallenged leaders of a large and able bar. He never knew what it was to be poor, or without friends, although he never wielded great wealth. But even if he had set forth upon his brilliant career without the advantages of competency, friendship and a liberal education, he would surely have arrived at the desired goal by slower marches but in good season. If we attribute his auspicious entry into professional life chiefly to good fortune, we must give him credit for the unsurpassed zeal and industry which distinguished his progress. He might have builded on his father's fame, but instead thereof he laid his own foundations, and the superstructure which he erected was entirely his own. He had a more vigorous and comprehensive legal mind than his father possessed.

Mr. McAllister had a large, square face, an unusual proportion of it below the eyes; a forehead neither full nor high, and lower than the average of men of ability, with no corrugations to betray the earnest study he concentrated upon his causes; a head thick through and noticeable chiefly for its peculiar and irregular shape; the whole suggesting the seat of a practical mind, highly endowed with the powers of analysis and conclusion. His large and heavy frame lent to him the aspect of solidity and power, but his movement of body, notably lively for a man of his stature, militated somewhat against this impression. This alertness of movement corresponded with the action of his mind; and, like the latter, never ran into haste. Thoroughness and dispatch exercised joint and harmonious control over his whole being.

In the trial of a cause his manner was admirable. He was cautious, but caution never fettered him. He was rapid, but was never carried beyond his object. One of his most noticeable habits was to take down with his own hand all the evidence of witnesses. He was eternally writing. St. Augustine said of that "most learned of the Romans," Marcus Terentius Varro, that he had read so much that we must feel astonished that he found time to write anything; and he wrote so much that we can scarcely believe that any one could find time to read all that he had composed. It may be said of McAllister, that he read so much, it seems hardly possible he could write much; yet it would engross the time of almost any person to read, not what he composed, but what he wrote down in court. What he wrote would hardly prove as entertaining as the critical, philosophical, and other treatises of Varro, for what dropped from his pen was testimony. This, however interesting to him as bearing on his cause, would be dry, cold and barren enough to others.

This habit of taking down testimony, although the shorthand reporter is doing the same task more accurately, is very advantageous to an advocate. And it loses half its benefit when done by proxy, for the evidence is then less impressed upon the advocate's mind. This duty is generally shirked, because it is hard work, and is unjustly regarded as merely manual. Successful lawyers usually turn aside from the clerical details of their business. In McAllister this habit of which we speak was in keeping with his general industry.

McAllister sat usually facing the jury, and rarely rising from his chair. His table was covered with books and papers, and a boy was generally waiting to make fresh drafts upon his well-stocked library. The court-room was for him a place of earnest work. From the beginning to the end of the trial, he was writing, reading, questioning, objecting, arguing, appealing. The observer was constantly impressed with his industry and watchfulness. But from the court-room he turned playfully away and would walk along the corridors of the City Hall, and even on the streets, with his arm on some brother lawyer's shoulder.

In eliciting testimony, McAllister exhausted the information without trying the patience of the witness. He never bored or insulted. He never played the tyrant over a timid witness, and never led a rash one to his undoing, just for the love of the thing. He never figured in any of the discreditable scenes

in which lawyers and witnesses grapple in wordy combat.

He was never fined by a court. McAllister, like every thoroughly trained lawyer, was politic, and therefore polite—alike courteous to court, counsel, jury and witness. To counsel associated with him in the trial of a cause he was uniformly deferential, but would not play second fiddle. He always led his side. He was not troubled with the idea, which haunts so many legal small-fry, that to be respectful to an adversary is to succumb to him, or that to listen decently to a postulate is to admit its soundness. He never sneered at a proposition, and never stated one dogmatically. He met the tyro with his hesitating step, and the veteran with his measured stride with the same air of respect.

With all his dispatch, it was yet in the fullness of time, and, with a clear comprehension of his cause, that McAllister rose to address his familiar and favorite auditory—the jury. He was now in the house of his friends, and in speech and manner he showed that he was conscious of it. Having omitted nothing as regarded introduction of evidence, so now he left nothing unsaid which the jury should hear. They had witnessed his patient management, his shrewd generalship, the evidences of his careful preparation, and if, when he rose before them, they had not already recognized the fact that he knew his case to the utmost details, he soon convinced them of it. They appreciated his address to their reason, admired his methodical arrangement of facts, and found entertainment in his argument. Without betraying any effort to subject them to any personal influence; always respectful without being patronizing; ever earnest, but never inflamed; fluent, yet not verbose; easy in manner, yet a stranger to dramatic effect, he challenged respect for himself, even when he failed to elicit sympathy for his cause. His voice and physique, as well as the cast of his mind, were more suited to the argumentative than the pathetic style. At times, however, in capital cases, he approached eloquence, drawing on the classics to give point and polish to his appeals. In quoting Shakespeare and the Bible he was quite happy. His elocutionary powers belonged neither to the first nor the second order. Nothing could be said for his gesticulation; his metaphors were few and not striking, and, as to apostrophe, that perfect flower of Baker's oratory, he rarely called it to his aid.

We said this bar leader had no specialty. Great lawyers are often distinguished for specialties; too often the public assign them to specialties, when, in truth, they have none. McAllister never suffered from this popular propensity. Not only had he no specialty, but the fact was acknowledged by all. Whether his case involved land titles, inheritance, patent rights, private franchises, personal liberty, human life, or constitutional law, he was equal to the occasion.

As a pleader—a writer of pleadings—McAllister was careful and correct, evincing an intimate acquaintance with English forms and precedents. Although he probably did more work than any member of the California bar, there was no one who took things easier, or whom work hurt less. He owed this in a great measure to his powers of endurance—a splendid auxiliary to close mental application—and to his habit of investigating and methodizing at the same time. He was full of life and energy, had naturally a high temper, which he kept under good control, seemed to have schooled himself to be slow to anger, and was not combative.

He had one habit, which some commend and some condemn—that of interjecting into his arguments doggerel of his own manufacture. Perhaps it ought not to be censured, because he generally turned it to account. It was at least better than punning, and an advocate perchance often indulges in pleasantry of some kind to cause a laugh and give surcease from the monotony of argument.

"A little nonsense now and then,
Is relished by the wisest men."

It may be said of McAllister's poetry, that it was more pleasing to the ear when spoken by its author in court than it would be to the eye if in print. At any rate, we shall not print any of it. Occasionally he deserved punishment for his temerity in this line—or rather in these lines. In his argument in the case of the Hibernia Savings and Loan Society vs. Mahoney et al., Fourth District Court, 1877, he let go some verses on which issue was joined by the opposing counsel, Judge Delos Lake. The latter, recalling the stereotyped expression, "more truth than poetry," declared that his adversary's verses contained "more poetry than truth," and added that "that was not saying anything for the poetry."

Among this advocate's minor resources was an unfailing vein of humor, not noteworthy

for its richness, yet not to be omitted in this sketch. On one occasion he was called at the eleventh hour into a case in which he had a colleague who was well prepared. While the latter was examining a witness, his memorandum of authorities fell under McAllister's eye, and was soon copied on a fresh sheet of paper, and, in a short time, a messenger laid the books on the table. The time for argument arriving, McAllister's colleague called on him to open, which he did by reading from his own books his associate's authorities. In closing, he said his associate would supplement what he had said by further argument. The associate arose, with serious front, and observed, poor man! that he had intended to address the court, but that Mr. McAllister had covered the ground so thoroughly that he deemed it unnecessary to add anything.

A certain lame lawyer had a certain lame client. The two resembled each other strongly in their awkward gait and clumsy locomotion. The litigant, while looking for his attorney on the street one day, hobbled up to McAllister and asked: "Have you seen Lawyer ——— going along this way?" "I never saw him going along any other way," was the reply.

Among the more important of the law causes in which McAllister won renown worthy of especial note was that of Tompkins vs. Mahoney, tried in San Francisco in the year 1865. The plaintiff, a lawyer, recovered judgment against the defendant for some $30,000, including interest for legal services rendered during a period of several years. McAllister was his attorney, and his excellent address to the jury so pleased his client that the latter declared, in his enthusiasm, that he would have given one-half of the amount of the verdict for a verbatim copy of the speech. (The courts had no official stenographers at that time.)

Mr. McAllister married a lady of rare accomplishments, a daughter of Samuel Herman, notary public, and raised a large family. His widow survived him a few years. He owned a city residence, a beautiful summer home in Marin county, and was in comfortable circumstances. Reference to his family recalls a scene which occurred in the early days in the United States Circuit Court, of which tribunal Hall's father was judge, Hall's brother, Cutler McAlilster, was clerk, and Hall McAllister himself the chief practitioner. It happened one day, that as McAllister was presenting an ex parte motion, no one being in the courtroom but the father and the two sons—judge, clerk and counselor—J. J. Papy, a well known attorney, now deceased, having business in the court, opened the courtroom door, and, after a hasty glance, was about to withdraw, when the judge said: "Come in, Mr. Papy." The latter bowed his acknowledgement to the bench, and said: "Your Honor will pardon me; I hate to intrude into a family meeting." The punctilious Mr. Papy then silently stole away, and the argument was resumed.

McAllister's name ran through eighty volumes of Supreme Court Reports, beginning with the case of Payne vs. Pacific Mail Steamship Company, in Volume 1. He acquired a competency, but he continued his work to the last, as might one who felt the sharp spur of want.

McAllister broke down suddenly in body and mind, in the summer of 1888. The physicians said the trouble was impoverishment of blood, caused by overwork. He passed several months in Europe, returning in November, and died at his country residence near San Rafael, on December 2, 1888, aged 62 years. He was buried with the rites of the Episcopal church. He left a widow, as already stated, and three daughters, one of whom was the second wife of Hon. Frank [illegible] Newlands, and a son. The latter is the present Hall McAllister, of San Francisco, who is following his father's profession.

STEPHEN J. FIELD.

We come to the most distinguished name in the judicial history of the State, and one that is illustrious in the magistracy of the nation. There were always those who did not like the man, but never one who refused to bow to the pre-eminent lawyer and imperial judge.

The Rev. David D. Field, an eminent New England divine, who died about the year 1862, lived to see five sons attain enviable distinction. These were David Dudley Field, the great bar leader of New York, Cyrus West Field, who brought Europe and America to speaking terms through the electric current; Jonathan Field, once president of the Massachusetts State senate; Stephen Johnson Field, the jurist, and Henry Martyn Field, who, like his father, reached eminence in the pulpit.

"One o'er another rose their heads in tiers,
Steps for their father's honorable years."

The stock is Puritan.

Stephen J. Field was born in Haddam, Connecticut, November 4, 1816. His grandfathers on both sides were American army officers in the revolution.

Rev. Dr. Field removed from Connecticut to Massachusetts and settled at Stockbridge, when his son Stephen was but three years old. Ten years later, Stephen accepted an invitation from Rev. Mr. Brewer and wife, missionaries to the Levant, to go with them to the scene of their future labors. Mrs. Brewer was his sister, and her invitation being emphasized by the advice of his father, and his eldest brother, he sailed with the missionary couple December 10, 1829, and arrived at Smyrna February 5, 1830. He was abroad two and a half years, passing his time at Smyrna, Athens and other famous cities which had survived buried empires, visiting also the islands of the Grecian Archipelago. He acquired the modern Greek, and a fair knowledge of the French, Italian and Turkish tongues. His brother, David, had advised him to this course with a view to seeking a chair in an American university as professor of Oriental Languages and Literature. He was in Smyrna when the city was visited by a fearful plague in 1831.

Having been thrown in contact while abroad with people of many religious creeds and faiths, all of which presented to his eye evidences of sincerity in belief, as well as of humanity and true devotion, the boy returned home with his hold upon Puritanism entirely loosened. He had been taught, for so his parents thoroughly believed, that the New England Puritans had the only true religion. He now concluded that there was other food for the soul, and ever afterwards his early conclusion being strengthened by mature reflection, he showed a lofty tolerance in religious matters. In tracing his career and noting the exceptional activity, courage and persistence which marked it, it would seem proper to call him a greater man, if not a greater lawyer, than his eminent elder brother. He struggled against greater disadvantages, he overcame more stupendous obstacles, he accomplished more difficult undertakings, he rose to a more enduring fame.

Entering Williams College in 1833, he won the highest honors, delivering the Greek oration in the junior exhibition, and the valedictory, upon his graduation in 1837. In the following spring he became a law student in his brother David's office in New York city. He was admitted to practice in 1841, the period of his study in law having been broken for a time by his service as a teacher in the Albany Female Academy. As soon as admitted to the bar his brother received him as a partner, and they had a cordial business and brotherly union of seven years.

When the Mexican War broke out, David Dudley Field strongly advised his young brother to go to California. He, David, had made himself familiar with the geography and even the political history of the Pacific coast, and had contributed to the Democratic Review two articles on the "Oregon Question."

The young lawyer determined to first make a visit to Europe. So, dissolving the partnership, he crossed the Atlantic in June, 1848. In December of that year, in Paris, he heard of the discovery of gold in California. This country had come under the American flag. He at once concluded to visit it, but remained in Europe, sightseeing, for about nine months, then returned to New York. It was now October 1, 1849, and six weeks later he sailed for California by way of Panama. He arrived in San Francisco December 28, 1849, just in time to be a pioneer. He got into lodgings with three dollars left him, two of which he was compelled to part with the next morning for the cheapest breakfast he could order.

He was buoyant in spirit, although out of money, and in a new land, far distant from his home and kindred. The day was beautiful—in very midwinter—the air was exhilarating, everybody was active and happy, and the common salutation was "What a glorious country!" Passing along Clay street, when near Kearny, he noticed a sign in very large letters, "Jonathan D. Stevenson. Gold dust Bought and Sold Here." "Hello, here is good luck!" he thought. His brother David had given him a promissory note which he held against Colonel Stevenson for $350, stating that he understood the Colonel had become rich in California, and if this were true, to ask him to pay the note. Taking the piece of paper from his otherwise empty pocket, he entered the place where gold dust was bought and sold. He was recognized and cordially received. In talking about the "glorious country," the Colonel let fall the welcome

information that he had made $200,000. The note was presented and paid with interest in full—$440.

San Francisco was given a short trial. In less than three weeks from the time he landed here the young lawyer took the steamboat for Sacramento. His objective point was the new town of Vernon, a little further up the river at which point he had been advised to enter upon an active practice of law by Simmons, Hutchinson & Co., of San Francisco, to which firm he had brought letters of introduction. Finding that Vernon consisted of a single shanty surrounded by a vast expanse of water—the country was then flooded—he pushed on to Nye's Ranch, near the mouth of the Feather river. There he found a bustling camp of several hundred men, and concluded to pitch his tent. An auctioneer was selling town lots. The lawyer asked him the price. The lots were 80x160, the same as in Sacramento, and the uniform price was $250. "Suppose a man puts his name down and afterwards does not want the lots?" asked the lawyer. "Oh, you need not take them if you don't want them," replied the auctioneer. "I took him at his word," said the newcomer afterwards; "I wrote my name down for sixty-five lots aggregating in price of $16,250."

He had only about $20 left of what Colonel Stevenson had paid him, but he became the lion of the hour, the capitalist of the community. The proprietors of the land who had just bought it from General Sutter, but who had not yet got their deed, showed the newly arrived capitalist marked attention. Two of their number were French gentlemen, and finding their new acquaintance spoke their tongue, they became the more appreciative.

From the beauty and healthfulness of the spot, and its admirable location, our far-seeing friend was satisfied as to its future. Messieurs Covillaud and Sicard, the two French gentlemen named, became his friends and clients, and he wrote for them the first deed or law paper ever recorded affecting property in Marysville. General Sutter, then living at Hock Farm, six miles distant, signed this deed, which conveyed several leagues of land.

So the attorney went to work at once. On the next day after his arrival, in the evening, a public meeting was held to decide if a town government should be established. It was decided in the affirmative after a speech by Field, predicting a brilliant future for the place.

Who named Marysville? On January 18, 1850, the people of the new town, then called by some Nye's Ranch, by others Yubaville, established a town government electing an Ayuntamiento, or Town Council, first and second alcaldes and a marshal. Judge Field was elected first alcalde by a majority of nine votes. It was urged against him that he was a newcomer. He had been there only three days, while his opponent had been there nine days. In the evening another public meeting was held to hear the result of the election. It was resolved at that gathering to give the new town a name. The competing cognomens were "Yubafield," Yubaville," and "Circumdoro." But at the last moment an old man arose, and said that there was an American lady in the place, the wife of one of the proprietors (the French gentleman, Covillaud). Her name was Mary, and in her honor he moved that the place be called "Marysville." This was at once agreed to amid hearty cheers, and with not one dissenting voice. Mrs. Covillaud was one of the survivors of the Donner party, who endured such frightful sufferings in the Sierra Nevada mountains, in the winter of 1846-7.

As the constitution of the State had gone into effect, although the State had not been admitted into the Union, to make his calling and election sure, the new alcalde obtained from Governor Burnett a commission as justice of the peace, the two offices amounting to one and the same thing in jurisdiction, except that the duties of the justice of the peace were accurately defined.

A few weeks after his arrival at Marysville, he was very glad that he had put his name down on that auctioneer's list for sixty-five lots—and he was very glad that the auctioneer had not treated it as a joke. Within ninety days he had sold over $25,000 worth of real estate, and had a good majority of his lots left. He had brought from San Francisco frame and zinc houses, which yielded a rental of over $1000 a month. His fees as alcalde were large, and at one time, not to mention his real estate, he had $14,000 in gold dust of his own in his safe. About that time he employed as a clerk George C. Gorham, then 17 years of age. He found Gorham a quick youth and a trusty agent, and was always his faithful friend.

Leaving the office of alcalde, Judge Field

had just entered actively upon the practice of the law when he was nominated for the assembly. He had had a rupture with the District Judge, William R. Turner, which has no parallel in controversies between bench and bar, and which will be noticed hereafter. As a candidate for the legislature he openly announced that his purpose was to reform the judiciary, and to have Judge Turner removed from the bench of that district. Judge Turner, in return, threatened to drive the would-be lawmaker into the Yuba river. Yuba county then embraced, in addition to its present area, the present counties of Nevada and Sierra. Many interesting incidents of this animated canvass are preserved. At one place in the mines he arrived on the scene just in time to save an innocent man from being hanged. He treated the lynch jury many times to the best wines and cigars that could be got, and appealed to their hearts while tickling their appetities.

He was elected by a large majority. Immediately he commenced the preparation of a bill relating to the judiciary. The legislature met at San Jose the first Monday in January, 1851. Judge Field was appointed on the judiciary committee. To this committee he submitted his bill, and they approving it, it became a law. Its essential features have ever since been preserved, and are now to be found in our Code of Civil Procedure. Besides creating eleven judicial districts, it defined the jurisdiction and powers of every judicial officer in the State, from Supreme Judge down to Justice of the Peace. He also introduced a bill dividing the county of Trinity, and creating that of Klamath, and another bill dividing the county of Yuba and creating that of Nevada, and not forgetting his old enemy (and the sequel will show what cause he had to be mindful of him), he secured the formation of a new Eighth District out of Trinity and Klamath, and had the counties of Yuba, Sutter and Nevada united into a Tenth Judicial District. So Judge Turner, as Judge of the Eighth Judicial District, had to change his territorial base, and go to Trinity and Klamath, then sparsely settled counties. Not yet feeling that he had got even with his old foe, he presented petitions from many of the leading citizens of Yuba county, praying Turner's impeachment and removal from office, on the grounds of incompetency, ignorance, and arbitrary and tyrannical conduct. As an impeachment trial would necessitate a considerable extension of the session, and the members generally desired to get home, the proposed impeachment was indefinitely postponed by a majority of three votes, Judge Field not voting.

Judge Field introduced and secured the passage of the California Practice Act, now known as the Code of Civil Procedure. He adapted it from the New York Code of that name. We are in like manner indebted to him for our Criminal Practice, now our Penal Code. In this work he altered and reconstructed over three hundred sections of the New York codes and added over one hundred new sections.

Of course our Civil Procedure and Penal Codes have been greatly amplified since they left his hands in the shape of the Civil and Criminal Practice Acts. The state of Nevada and the surrounding territories adopted these laws regulating civil and criminal procedure before they were translated and elaborated into our own codes.

As an illustration of the respect which Judge Field exacted from his co-legislators, on account of his clearness of judgment and constant industry, it may be stated that the Criminal Practice Act, as introduced by him, was never read before the legislature. The rules were suspended and the bill read by its title and passed. It narrowly escaped hostile action from the Governor. It comprised over six hundred sections, and on the last day of the session the Governor told Judge Field that he could not sign it without reading it, and it was too late for him to do that. The Judge urged him to sign it, representing that it was essential to the harmonious working of laws already passed. "You say it is all right?" asked the Governor. "Yes," answered the Judge, and the signature was given which made it a law.

Our legislator also secured the passage of an act making it impossible for judges to disbar attorneys without a hearing. This was, no doubt, suggested to him by his war with Judge Turner. He also drew the charters of the cities of Marysville, Nevada and Monterey. His other legislative work was important. When the legislature adjourned, he was a ruined man in a pecuniary sense. He could hardly pay his passage. After his expulsion from the bar, by Judge Turner, he commenced speculation, and sowing to the winds he reaped whirlwinds. When he returned to the city which he had practically founded he had only a few cents in his pocket, and he was minus all his property,

Stephen J. Field

and in debt to the depth of $18,000. No old Californian will be surprised at this. It was in keeping with the average Californian's experience. "My dear Mr. Peck," he said to the proprietor of the United States Hotel (whom he could have bought out twenty times over, one year before), "will you trust me for two weeks' board?" Whether from innate nobility or motives of business policy, Peck answered, "Yes," and he added, "for as long as you want." And Peck sent a man and had the law-maker's trunks brought from the steamboat, and made him at home.

Now, in a little room, with a pine table and a cane-bottom sofa, and the bills which had just passed the legislature and the statutes of the previous session for a library, thus humbly, thus bravely, did he take again to his profession. There was an unfurnished loft over his office in which he slept. The cot he slept upon he bought on credit. On this he spread a pair of blankets. His pillow was his valise. His washstand was a chair without a back. He managed to secure a tin basin, a pail, a piece of soap, a toothbrush, a comb, and a few towels. He was his own hewer of wood and drawer of water. He did not use that rude furniture long, nor did he pass many nights in the loft. Soon the luxury of fine apartments for both office and lodgings was attained. Within two and a half years he paid all his indebtedness, which, with interest, exceeded $38,000. His great success drew him closer to his profession, and he resisted every suggestion or invitation to run for office. Marysville had grown into an attractive and busy city of twelve or fifteen thousand people, and being at the head of navigation, was the emporium whence a vast country drew its supplies. It had an able bar. Judge Field practiced in Marysville, and also in all Northern California. For some years he had the most lucrative practice in the State, outside of San Francisco. We have examined the California Reports, and find that during the period of about seven years—between his leaving the legislature and his going on our Supreme bench—he had more causes in our Supreme Court than any other lawyer. And his success on appeal was almost phenomenal. He was successful in nine out of every ten cases. Wherever the Reports show Stephen J. Field was for the appellant, the judgment was reversed, and where he was for the respondent, the judgment was affirmed—that is, that was the rule, and the exceptions were few.

William R. Turner, who had just been appointed Judge of the District Court of the Eighth Judicial District, which embraced Yuba county, opened his court in Marysville, on the first Monday in June, 1850. Among those who waited upon him a few days before to pay their respects, was Stephen J. Field, who handed him his latest copies of the New York Evening Post, which journal was then the organ of the Freesoil party. From this fact Judge Turner, who had lived in Texas, and was a pro-slavery man of narrow mind and violent temper, inferred that his Northern visitor was an Abolitionist, although he was in error on this as on many other points about him—all of which he found out in time. The New York lawyer was about to revisit his old home, leaving his affairs in a very prosperous state, when his friend, General Sutter, insisted that he should postpone his departure long enough to be his counsel and assist his attorney in the case of Cameron vs. Sutter, just instituted in Judge Turner's court. The request was complied with, and during the first week of court the case of Cameron vs. Sutter was called. Judge Field's associate made a preliminary motion, which Judge Turner denied. Jesse O. Goodwin, who sat near, passed Judge Field the Practice Act, and pointed to a section bearing on the question. Judge Field arose, and asked permission to read the section. Judge Turner replied: "The court knows the law; the mind of the court is made up; take your seat, sir." Judge Field was amazed, but said, respectfully, that he excepted and would appeal. Judge Turner then, in loud and angry tones, said: "Fine that gentleman $200." Judge Field's next was, "Very well," or "Very well, sir." Judge Turner immediately added, "I fine him $300, and commit him to the custody of the sheriff for eight hours." Another quiet "Very well," came from Judge Field. Then Judge Turner exclaimed excitedly, "I fine him four hundred dollars and commit him twelve hours." Judge Field then remarked that it was his right by statute to appeal from any order of his honor, and that it was no contempt of court to give notice of an exception or an appeal, and he asked the members of the bar present if it could be so regarded. Judge Field had better tell the rest himself:

"Upon my statement, he flew into a perfect rage, and in a loud and boisterous tone cried out, 'I fine him five hundred dollars and commit him twenty-four hours—forty-eight hours—turn him out of court—subpœna a posse—

subpœna me.' I left the court-room. The attorney in the case accompanied me, and we were followed by the deputy sheriff. After going a few steps we met the coroner, to whom the deputy sheriff transferred me. . . . The attorney, who was much exasperated at the conduct of the Judge, said to me, as we met the coroner, 'Never mind what the Judge does; he is an old fool.' I replied, 'Yes, he is an old jackass.' This was said in an ordinary conversational tone, but a Captain Powers, with whom Turner boarded, happened to hear it, and running to the court-house and opening the door, he hallooed out: 'Judge Turner! Oh, Judge Turner! Judge Field says you are an old jackass.' A shout followed, and the Judge seemed puzzled whether or not he should send an officer after me or punish his excitable friend for repeating my language. Toward evening the deputy sheriff met the Judge, who asked him what he had done with me. The deputy answered that I had gone to my office, and was still there. The Judge said: "Go and put him under lock and key, and if necessary put him in irons.' The deputy came to me and said: 'The Judge has sent me to put you under lock and key; let me turn the key upon you in your own office.'"

Asking the deputy to show his warrant of commitment, and finding that he had none, the lawyer became indignant, and told the officer to go away. Saying, "I will lock the door anyway," the officer did so, and retired. A writ of habeas corpus was immediately sued out and forthwith executed, and that same evening the County Judge, Henry P. Haun, afterwards United States Senator, promptly discharged the lawyer, there being no warrant in the officer's hands. While Judge Field was treating a crowd of excited friends that night—which cost him $200—Judge Turner came on the scene, on fire with fury, and applied vile and obscene epithets to the County Judge, saying that he would teach "that fellow" that he was an inferior Judge. The wrathful magistrate was hung in effigy that night on the public plaza. He said this was Judge Field's work—which was another mistake.

The story of this extraordinary "contempt" case is a long one, but we can reduce it and not spoil it. On the day when the court next opened, Judge Turner made an order that Judge Field be expelled from the bar for suing out the habeas corpus; also expelling Samuel B. Mulford and Jesse O. Goodwin for being witnesses on the return—on the pretense that they had, all three, "villified the court and denounced its proceedings." He also fined the County Judge $50 and ordered him imprisoned for forty-eight hours for discharging Judge Field from arrest. The County Judge paid his fine and left the court-room, and the sheriff took Judge Field into custody. The latter immediately sued out another writ of habeas corpus, and while before Judge Haun and his associates of the Court of Sessions, arguing for his discharge, the sheriff entered and declared his intention of taking Judge Field from the court-room and Judge Haun *from the bench*, and putting both in confinement in pursuance of Judge Turner's order.

There was an extraordinary scene in court. Judge Haun told the sheriff that the Court of Sessions was holding its regular term; that he (the sheriff) was violating the law, and that the court must not be disturbed in its proceedings. The sheriff returned to Judge Turner and reported the situation. Judge Turner ordered a posse to be summoned, asking those in the courtroom to serve on it, and directed the sheriff to take Judge Haun and Lawyer Field by force, and, if necessary, to put Judge Haun in irons—to handcuff him. The sheriff and his posse soon rushed into the Court of Sessions, forced the attorney from the court-room, and were just about to give the unexampled exhibition of tearing a magistrate from his seat, when Judge Haun stepped to a closet, and drew from it a navy revolver, cocked it, and leveling it at the sheriff, declared he would kill him if he approached nearer. He also fined the sheriff $200 for contempt of court, appointed a temporary bailiff, and directed the latter to eject the sheriff and his party from the chamber. The new bailiff acted promptly, the bystanders responded to his call, and the intruders withdrew. Judge Haun then laid his revolver on his desk, inquired if there was any further business, and there being none, he adjourned the court. To further curtail the account, it may be stated that before the Supreme Court, Judge Field was successful as usual. That tribunal entirely undid Judge Turner's work. His orders imposing fines were reversed, and Messrs. Field, Goodwin and Mulford were restored to the bar. Judge Turner refused to obey the mandate of the Supreme Court for the restoration of the attorneys. He issued an address to the public, to which the three attorneys and five others replied, the reply

declaring that Judge Turner was a man of depraved tastes, of vulgar habits, of an ungovernable temper, reckless of truth when his passions were excited, and grossly incompetent.

Judge Turner then threatened to publicly insult Judge Field, and then to shoot him, if he resented it. Judge Field repaired to San Francisco and took counsel of Judge Nathaniel Bennett. The latter gave some advice, which, if acted upon, would hardly have tended to promote Judge Turner's well-being. Being unused to arms, and reared to do without them, Judge Field did not like to "heel" himself, to use the word of that day, but he was told and he believed that his life depended on it, and accordingly he purchased a pair of revolvers, had a sack coat made with pockets in which the weapons could lie and be discharged without taking them out, and by practice made himself a good shot. Then he sent by Ira A. Eaton, a message to Judge Turner, which was substantially, "I desire no trouble with you, but I will not avoid you; I have heard of your threats, and if you attack me or come at me in a threatening manner, I will kill you." They often met, in many places, but no words passed. Judge Field, when he saw his foe, always grasped his pocketed arms, and kept a sharp lookout. He said he felt that he was in great danger, but that after a time there was a sort of fascination in this feeling. He did not think that Judge Turner would have shot him down deliberately, when sober, but that, when in drink, and in presence of lawless crowds who heard his threats, it would have taken but little to urge him on.

All this happened, be it remembered, six or seven months before the legislature, through Judge Field's influence, removed Judge Turner to the snows of Trinity. In the meantime the disbarred attorney was ruined in business. He was not permitted to practice in the District Court, despite the Supreme Court mandate, and if he had been, his relations with the court were such as to keep clients away from him.

Why did not the Supreme Court compel obedience to its mandate? It happened thus: The disbarred attorneys having been admitted to the Supreme Court, which entitled them to practice in all the courts of the State, Judge Turner made an order for them to show cause why they should not be again expelled. They showed cause enough, but it was not received, and a second order of expulsion was entered. From his very position he was enabled to keep the attorneys lively, and for a time to ruin their business. Another mandate was obtained from the Supreme Court for their reinstatement. They then asked for Judge Turner's punishment, but the Supreme Court declined to punish him, on the ground that he had recognized the first mandate by making a second order of expulsion, after an order to show cause, etc. (Very nice point.)

Judge Turner, after being removed to Trinity, served out his term, and at its close was a candidate for re-election. His opponent being declared elected by one vote, he contested, and it went to the Supreme Court. Judge Field was then on the latter bench, but he did not participate in the hearing or decision, and Justices Terry and Baldwin gave the office to Turner. The latter then sent a friend to Judge Field to inquire if he would be reconciled. Judge Field said no; that the world was wide enough for both; and each would go his own way. The next day Judge Turner stationed himself where Judge Field had to pass to go into court, and as his old adversary approached, he called out: "I am now at peace with all the world; if there is any man who feels that I have done him an injury, I am ready to make amends." Judge Field looked at him a moment, then passed on. The same thing occurred the next day. That was the last time the two Judges ever met. Judge Turner served out his term, and was again elected. In 1867, Mr. Charles Westmoreland, member of the assembly from Trinity, offered resolutions looking to Judge Turner's impeachment for high crimes and misdemeanors. Mr. Westmoreland made a speech severely arraigning the Judge for his many acts of tyranny. The resolutions were adopted, but before the appointed committee took action, Judge Turner resigned, and not long afterwards died.

At the end of this extraordinary and protracted struggle, Judge Field found that his triumph had cost him his fortune and his business. Yet his reputation as a lawyer had increased, and as soon as it was seen that he had fair play at court, his practice again became large. Judge Turner being moved to another district, and a new (Tenth) district being created, comprising Yuba, Nevada, and Sutter counties, the Governor commissioned Gordon N. Mott, Judge of the new court. Judge Mott was the personal and political friend of Judge Field, who urged him for the

place. He died in 1887, at quite an advanced age, in San Francisco.

In the fall of 1857, Judge Field was elected, as the Democratic nominee, a Justice of the State Supreme Court. In September, 1857, immediately after his election, and about three months before his term was to commence, Hugh C. Murray, Chief Justice, died, and Peter H. Burnett, Associate Justice, was appointed Chief Justice. To the vacancy thus caused by Judge Murray's death and Judge Burnett's advancement, Judge Field was appointed by Governor J. Neely Johnson, an old Whig and Know Nothing opponent of his. He accepted and took his seat on the Supreme bench, October 13, 1857, nearly three months earlier than he had anticipated.

The opinions of this jurist, delivered while on our State Supreme bench, are comprehended in fifteen volumes of the California Reports—Nos. 7 to 21 inclusive. They had been commented on and approved by Mr. Emory Washburn, professor of law in Harvard University, (see American Law Register for June, 1862); by Judge Dillon, a leading and universally approved American law writer; by Professor John Norton Pomeroy, who ably sketched Judge Field's career as legislator and jurist; by Judge Joseph G. Baldwin, one of the most fertile legal minds, who said that "Judges reposed confidence in his opinions, and he always gave them the strongest proofs of the weight justly due to his conclusions," and by many other authorities on legal science. Said Professor Pomeroy: "I was told by a gentleman, who has for many years been employed by a leading law publishing house of Boston as its traveling agent through all the States of the Mississippi and Ohio valleys, that, when he first began his work, the New York Reports were universally sought for in every State; but that of late years the demand had changed from the New York to the California Reports. Everywhere through the Western and the Northwestern States the profession generally wished to obtain the California Reports as next in authority to those of their own State."

This gratifies our State pride; and to whom do we owe it more than to Judge Field? He had been longer on our Supreme bench than any other man, his decisions had been less disturbed, and more respected by his successors than those of any other Judge, and, being grounded in immutable principle, they have all the strength and majesty of authority.

Judge Field was commissioned by President Lincoln a Justice of the Supreme Court of the United States on March 16, 1863. He took the oath on May 20th, following. He was assigned to the Tenth circuit, then comprising California and Oregon, Nevada being afterwards included.

On January 13, 1866, at Washington, while opening his mail, which lay on a center table, Judge Field noticed among the papers a small package about an inch and a half thick, three inches wide and three and a half inches long. It was stamped, addressed to "Hon. Stephen J. Field, Washington, D. C.," and was marked "Per Steamer." It bore no trace of hand-writing. The Judge's name had been cut from a volume of the California Reports, and pasted on. The words "Washington, D. C.," and "Per Steamer," had been cut from a newspaper. On the other side were the words in print: "From Geo. H. Johnston's Pioneer Gallery, 645 and 649 Clay street, San Francisco." Thinking it was a present for his wife, who was then in New York, he concluded to partially open it to satisfy himself on that point. Tearing off the paper and raising the lid of what appeared to be some sort of a little box, he was struck with its black appearance inside. "What is this?" he said to Judge Delos Lake, of San Francisco, who was making him a call. Judge Lake also suspected something wrong, and quickly said, looking over his friend's shoulder: "Don't open it—it means mischief." Judge Lake took it in his hands, and treating it with the utmost tenderness, carried it to the capitol and showed it to Mr. Broom, one of the clerks of the Supreme Court. They concluded to try to explode it. They dipped it in water, let it soak for some minutes, then took it into the carriage way, under the steps leading to the Senate Chamber, and threw it against the wall, shielding themselves behind one of the columns. The blow exposed the contents. Twelve pistol cartridges lay imbedded in glue, a bundle of sensitive friction matches, a strip of sandpaper, and some fulminating powder were ingeniously placed—the whole contrivance being so arranged that opening the lid would ignite the matches, which in turn would explode the cartridges. It was sent to the War Department, and General Dyer, chief of ordnance, had it examined. A detailed description of it was returned to General Dyer by Major Benton.

This murderous instrument was evidently

sent to the Judge by some man in San Francisco, who had been disappointed by some decision. On the inside of the lid was pasted a slip cut from a San Francisco paper, of October 31, 1864, stating that Judge Field had on the day previous decided a certain case, but this availed nothing, so far as the discovery of the bloody-minded inventor was concerned. He was never found out. Not even an arrest was made in connection with the affair, although the San Francisco police and many detectives spent months in trying to find a clue.

Judge Field was married in San Francisco in 1859, and his widow, who was Miss Sue V. Swearingen, is still living.

About the year 1880, Judge Field had printed in a neat little volume of 250 pages his autobiography. This was to preserve the record of his eventful life, and was distributed to his intimate friends, only thirty copies having been printed. A year later, an octavo volume of 464 pages was given to the profession by Chauncey F. Black and Samuel B. Smith, of New York city. It was a compilation made by political and personal friends of Judge Field, is an account of his work as a legislator and Judge, and gives copious extracts from his many opinions. It is preceded by an introductory sketch by John Pomeroy, and contains also an elaborate article by John T. Doyle, of the San Francisco bar, on the Electoral Commission of 1877 and Judge Field's connection therewith.

Judge Field's judicial connection with the Sharon cases, and with the celebrated contempt case of David S. Terry, is set forth in this History in the article on that litigation. Judge Field and Judge Terry had been on the California Supreme bench together for two years (1857-59).

After the killing of Terry, his slayer, David Neagle, was arrested at Stockton, upon a warrant issued there by a justice of the peace, before whom Mrs. Terry had filed a complaint charging both Neagle and Judge Field with the murder of her husband. On habeas corpus proceedings before the United States Circuit Judge Sawyer and United States District Judge Sabin, Neagle was discharged from custody on September 16, 1889. Judge Field, later in the same year, presented Neagle with a gold watch and chain.

In discharging Neagle, the court said:

"When the deceased left his seat, some thirty feet distant, walked stealthily down the passage in the rear of Justice Field and dealt the unsuspecting jurist two preliminary blows, doubtless by way of reminding him that the time for vengeance had at last come, Justice Field was already at the traditional 'wall' of the law. He was sitting quietly at a table, back to the assailant, eating his breakfast, the side opposite being occupied by other passengers, some of whom were women, similarly engaged. When, in a dazed condition, he awoke to the reality of the situation and saw the stalwart form of the deceased with arm drawn back for a final mortal blow, there was no time to get under or over the table, had the law, under any circumstances, required such an act for his justification. Neagle could not seek a 'wall' to justify his action without abandoning his charge to certain death. When, therefore, he sprang to his feet and cried, 'Stop! I am an officer,' and saw the powerful arm of the deceased drawn back for the final deadly stroke, instantly change its direction to his left breast, apparently seeking his favorite weapon, the knife, and at the same time heard the half-suppressed, disappointed growl of recognition of the man, who, with the aid of half a dozen others, had finally succeeded in disarming him of his knife at the court-room a year before, the supreme moment had come, or at least, with abundant reason, he thought so, and fired the fatal shot. The testimony all concurs in showing this to be the state of facts, and the almost universal consensus of public opinion of the United States seems to justify the act. On that occasion a second, or two seconds, signified, at least, two valuable lives, and a reasonable degree of prudence would justify a shot one or two seconds too soon rather than a fraction of a second too late. Upon our minds the evidence leaves no doubt whatever that the homicide was fully justified by the circumstances. Neagle on the scene of action, facing the party making a murderous assault, knowing by personal experience his physical reputation, his lifelong habit of carrying arms, his readiness to use them, and his angry, murderous threats, and seeing his demoniac looks, his stealthy assault upon Justice Field from behind, and, remembering the sacred trust committed to his charge—Neagle, in these trying circumstances, was the party to determine when the supreme moment for action had come, and if he honestly acted with reasonable judgment and discretion, the law justifies him, even if he erred. But who will have the courage to stand up in the presence

of the facts developed by the testimony of this case, and say that he fired the smallest fraction of a second too soon?

"In our judgment, he acted, under the trying circumstances surrounding him, in good faith, and with consummate courage, judgment, and discretion. The homicide was, in our opinion, clearly justifiable in law, and in the forum of sound, practical common sense commendable. This being so, and the act having been done . . . in pursuance of a law of the United States, as we have already seen, it cannot be an offense against, and he is not amenable to, the law of the State."

The decision of the Circuit Court discharging Neagle from the custody of the sheriff of San Joaquin county was affirmed by the Supreme Court of the United States on the 14th of April, 1890. Justice Field did not sit at the hearing of the case, and took no part in its decision, nor did he remain in the conference-room with his Associate Justices at any time while it was being considered, or on the bench when it was delivered.

The opinion of the court was delivered by Justice Miller. Dissenting opinions were filed by Chief Justice Fuller, and Justice Lamar. Justice Miller's opinion concludes as follows:

"We have thus given, in this case, a most attentive consideration to all the questions of law and fact which we have thought to be properly involved in it. We have felt it to be our duty to examine into the facts with a completeness justified by the importance of the case, as well as from the duty imposed upon us by the statutes, which we think requires of us to place ourselves, as far as possible, in the place of the Circuit Court and to examine the testimony and the arguments in it, and to dispose of the party as law and justice require.

"The result at which we have arrived upon this examination is, that in the protection of the person and the life of Mr. Justice Field, while in the discharge of his official duties, Neagle was authorized to resist the attack of Terry upon him; that Neagle was correct in the belief that without prompt action on his part the assault of Terry upon the Judge would have ended in the death of the latter; that such being his well-founded belief, he was justified in taking the life of Terry, as the only means of preventing the death of the man who was intended to be his victim; that in taking the life of Terry, under the circumstances, he was acting under the authority of the law of the United States, and was justified in doing so; and that he is not liable to answer in the courts of California on account of his part in that transaction.

"We therefore affirm the judgment of the Circuit Court authorizing his discharge from the custody of the sheriff."

Judge Field was also arrested under the same warrant in his chambers in the Federal building, San Francisco, by Sheriff Cunningham, of Stockton. The sheriff had given the Judge a day's notice, and a petition for a writ of habeas corpus was presented to the other Federal Judges before named. The writ was issued, and was heard on August 22d. The United States district attorney appeared for Judge Field, and associated with him were Richard T. Mesick, Samuel M. Wilson and William F. Herrin. The matter was submitted with leave to file briefs before August 27th. Before that date the Governor of the State wrote to the attorney-general as follows:

"Executive Department,
"State of California.
"SACRAMENTO, August 21, 1889.

"Hon. G. A. Johnson,
"Attorney-General, Sacramento:

"Dear Sir: The arrest of Hon. Stephen J. Field, a Justice of the Supreme Court of the United States, on the unsupported oath of a woman, who, on the very day the oath was taken, and often before, threatened his life, will be a burning disgrace to the State unless disavowed. I therefore urge upon you the propriety of at once instructing the district attorney of San Joaquin county to dismiss the unwarranted proceedings against him.

"The question of the jurisdiction of the State court in the case of the deputy United States marshal, Neagle, is one for argument. The unprecedented indignity on Justice Field does not admit of argument.

"Yours truly,
"R. W. WATERMAN,
"Governor."

On the 26th of August, upon the motion of the district attorney and the filing of the attorney-general's letter, the charge against Justice Field was dismissed by the justice of the peace who had issued the warrant against him.

The dismissal of this charge released him from the sheriff's claim to his custody, and the habeas corpus proceeding in his behalf fell to the ground. On the 27th, the day appointed for the further hearing, the sheriff announced that in compliance with the order of the magistrate he released Justice Field from custody, whereupon the case of habeas corpus was dismissed.

Among the expressions of public and private opinion conveyed to Judge Field on the subject of this tragedy, was one from the great Democratic leader and statesman, Thomas F. Bayard, of Delaware, of which the following is an extract:

"Passing over the arguments that may be wrought out of the verbiage of our dual constitution of government, the robust and essential principle *must* be recognized and proclaimed—that the *inherent powers* of every government which are sufficient to authorize and enforce the judgments of its courts are equally and at all times and in all places sufficient to protect the individual Judge who fearlessly and conscientiously, in the discharge of his duty, pronounces those judgments.

"The case, my dear friend, is not yours alone; it is equally mine, and that of every other American. A principle so vital to society and to the body politic, was never more dangerously and wickedly assailed than by the assault of Terry and his wife upon you for your just and honorable performance of your duty as a magistrate."

On the day after Judge Terry's death, the following proceedings occurred in the Supreme Court of the State:

Late in the afternoon, just after the counsel in a certain action had concluded their argument, and before the next cause on the calendar was called, James L. Crittenden, Esq., who was accompanied by W. T. Baggett, Esq., arose to address the court. He said: "Your honors, it has become my painful and sad duty to formally announce to the court the death of a former Chief Justice—"

Chief Justice Beatty: "Mr. Crittenden, I think that is a matter which should be postponed until the court has had a consultation about it."

The court then, without leaving the bench, held a whispered consultation, and Mr. Crittenden then went on to say: "I was doing this at the request of several friends of the deceased. It has been customary for the court to take formal action prior to the funeral. In this instance, I understand the funeral is to take place tomorrow."

Chief Justice Beatty: "Mr. Crittenden, the members of the court wish to consult with each other on this matter, and you had better postpone your motion of formal announcement until tomorrow morning."

Mr. Crittenden and Mr. Baggett then withdrew from the court-room.

On the following day, in the presence of a large assembly, including an unusually large attendance of attorneys, Mr. Crittenden renewed his motion. He said:

"If the court please, I desire to renew the matter, which I began to present last evening. As a friend—a personal friend—of the late Judge Terry, I should deem myself very cold, indeed, and very far from discharging the duty which is imposed upon that relation, if I did not present the matter which I propose to present to this bench this morning. I have known the gentleman to whom I have reference for over thirty years, and I desire simply now, in making this motion, to say that the friendship of so many years, and the acquaintance and intimacy existing between that gentleman and his family and myself for so long a period, require that I should at this time move this court, as a court, out of recollection for the memory of the man who presided in the Supreme Court of this State for so many years with honor, ability, character, and integrity, and, therefore, I ask this court, out of respect for his memory, to adjourn during the day on which he is to be buried, which is today."

Chief Justice Beatty said:

"I regret very much that counsel should have persisted in making this formal announcement, after the intimation from the court. Upon full consultation, we thought it would be better that it should not be done. The circumstances of Judge Terry's death are notorious, and under these circumstances this court had determined that it would be better to pass this matter in silence, and not to take any action upon it; and that is the order of the court."

Judge Field in 1897, when his term on the United States Supreme bench had equaled those of John Marshall and Joseph Story (thirty-four years), resigned. He had written in that period 620 of the decisions of that court. He died, childless, at the age of eighty-three years, at Washington, D. C., of kidney disease, on the 9th day of April, 1899.

E. D. BAKER.

Colonel Edward D. Baker, who was pre-eminent as a lawyer, orator and statesman, a soldier in three wars, and who fell in battle, has engaged the editor's pen in three independent works already. What has been said will be summarized here, and something added:

He was born in London, England, in 1811. When five years old, his parents came to the

United States, bringing him with them. They came to this country, loving its institutions. They were teachers, educators, and making their home in Philadephia, when the echoes of the old bell of freedom yet lingered on the air, they opened a school and taught the youth of that city until the father's death, ten years later. The mother lived to a great age, surviving her distinguished son.

When in the fullness of time, the latter became a United States Senator, his first letter bearing the senatorial frank was addressed to the aged mother. The Rev. Thomas H. Pearne of Portland, Oregon, is authority for the statement that, on the way to the postoffice with the letter in hand, and conversing with a friend, the Senator remarked with fond pride that his mother, then more than eighty years old, was a woman of strong, cultivated mind; that she had often taken down his speeches in shorthand, which she wrote with elegance and rapidity; that she was a beautiful writer, and still retained in vigor her mental faculties. Tears were in his eyes as he recounted her virtues and excellences.

At seventeen, Baker went to Illinois, settling at Carrollton. He studied law and elocution. When he was twenty-one he entered the Black Hawk war, obtaining a Major's commission. He distinguished himself in that war. In 1845-6 he represented the Springfield district in Congress; and the old *Globe* will show that he was then gifted with that clearness of vision, and that charm of speech, which later so often fascinated the people of the New West. He was then the first orator of Illinois. He was a Whig, but unlike most of the Northern Whigs, he favored the Mexican war. He gave up his seat in Congress to fight under Taylor. He was at Cerro Gordo, at the head of the Fourth Illinois regiment, which regiment was raised by him. Without following him through the war, let it be said that at its close his State presented him with a sword.

In 1849, he went to Congress again, a Whig from a Democratic district. In 1851 we find Baker in a strange role—superintendent of construction of the Panama railroad. He had a heavy force of men under him, and managed them with ability.

In June, 1852, Baker arrived in San Francisco, and until he departed for Oregon, eight years later, he practiced law with distinguished brilliancy and success. In 1859 he ran for Congress on the Republican ticket. That was, without exception, the most interesting year in the political history of California. It was the year of Broderick's death—the year when the great Democratic party broke in two. Burch and Scott were the regular Buchanan administration candidates for Congress. The anti-Lecompton or Douglas candidates were Joseph C. McKibben of Sierra, and Judge Booker of Stockton. The Republican candidates were Colonel Baker and P. H. Sibley. California then was strongly Democratic. By a tacit understanding between the Republicans and Douglas Democrats those two elements coalesced on candidates for Congress, and cast their united vote for Baker and McKibben. It was of no avail. Burch and Scott were elected by a heavy majority. But Baker made a magnificent canvass. From San Diego to Yreka, his eloquent tongue was heard, and never before or since have our hills and plains echoed so marvelous a voice. The Sacramento *Union* employed shorthand reporters to accompany the orator and to report his speeches verbatim. It was in that campaign that Baker made his great speech at Forest Hill, Placer county, known as his "Forest Hill" speech.

Henry Edgerton declared to us that he never heard so grand a speech. It may be found in full in the Sacramento *Union* of August 23, 1859.

It was in this campaign that we had the pleasure of grasping his warm hand for the first time. It was on the very day of election, and at the Third ward polls in Sacramento.

Colonel Baker lost this fight. As he afterwards publicly declared, his hopes and his heart were crushed. But in less than one year from the time of that Waterloo, he was a Senator of the United States. Oregon was his constituency.

Baker was very engaging on the lecture platform. Few, if any, of his efforts in that line were reported with any attempt at fullness. Indeed, before 1859, shorthand was a very rare accomplishment in California. Notable among his lectures, besides that on "Books," were "The Sea," "The Plurality of Worlds" and "Socrates." These he treated with a glowing imagination, closing the last with a noble tribute to Truth. At the Burns' centennial, 1859, he was very happy.

Another fine effort was his oration at the dedication of Lone Mountain cemetery (where his body rests), May 30, 1854. Starr King, in his touching address, six years later over Baker's open grave, made this allusion: "We have borne him now to the home of the dead,

to the cemetery which, after fit services of prayer, he devoted in a tender and thrilling speech, to its hallowed purposes."

A thoughtful and polished production of Baker was his oration at Broderick's funeral, September 18, 1859. It contains his stirring protest against duelling. Never was man so eloquently mourned as Broderick. Edgerton, we have seen, considered the "Forest Hill" speech as Baker's best. That is the opinion of Lieutenant Governor Neff, and many leading men. The multitude believe the Broderick oration was the masterpiece of all. Examination and comparison will demonstrate that the reply to Benjamin, in the United States Senate on January 2, 1861, was Baker's greatest and best-sustained effort.

He was freely and often interrupted, but stood forth the prince of debaters, and possessed of great and varied knowledge.

But for beauty of expression and pleasing effect his Atlantic Cable address of September, 1858, eclipsed all others. His eloquence is there transporting, as poetry and music. Baker suffered a severe penalty for his brilliant defense in the celebrated trial of Charles Cora. For a time he was socially ostracized. Society indicted him. It would never have visited such censure upon an advocate of ordinary powers. Cora had killed General Richardson, United States marshal, and his trial for the crime commenced January 8, 1856. He employed Colonel Baker to defend him, but public opinion insisted that the Colonel should leave the accused to his fate. He did his duty, and, in consequence, such was the inflamed state of the public mind, the eloquent old man suddenly found himself like a stranger in a strange land. Day after day the newspapers poured out their wrath upon his head. He stood his ground and "hung the jury." Before Cora could be put on trial the second time the vigilance committee hanged him.

But Baker may be quoted in his own vindication. In defense of Cora before the jury he took occasion to say:

"The legal profession is, above all others, fearless of public opinion, candid and sympathetic. It has ever stood up against the tyranny of monarchs on the one hand, and the tyranny of public opinion on the other. And if, as the humblest among them, it becomes me to instance myself, I may say it with a bold heart—and I do say it with a bold heart—that there is not in all this world a wretch so humble, so guilty, so despairing, so torn with avenging furies, so pursued by the vengeance of the law, so hunted to cities of refuge, so fearful of life, so afraid of death—there is no wretch so deeply steeped in all the agonies of vice and misery and crime—that I would not have a heart to listen to his cry, and find a tongue to speak in his defense, though around his head all the fury of public opinion should gather, and rage, and roar, and roll, as the ocean rolls around the rock. And if I ever forget, if I ever deny, that highest duty of my profession, may God palsy this arm and hush this voice forever."

It is the judgment of many that Baker never stood forth as the orator so irresistibly as in the old American Theatre in San Francisco (where now stands the Halleck block), on the night of October 27, 1860. Perhaps on that occasion he excited his audience to a pitch of enthusiasm and delight beyond all his other triumphs. One year before, he had left the State—defeated in a tremendous struggle, but hopeful and free of soul. He was now on his way from Oregon to Washington to take his seat as a Senator of the United States. He seemed inspired. The speech was fully reported and widely distributed. Delivered without notes, it was full of gems that will snarkle forever, as this:

"Here, then, long years ago, I took my stand by freedom, and where, in youth, my feet were planted, there my manhood and my age shall march. And, for one, I am not ashamed of freedom. I know her power; I rejoice in her majesty; I walk beneath her banner; I glory in her strength. I have seen her struck down on a hundred chosen fields of battle. I have seen her friends fly from her. I have seen her foes gather around her. I have seen them bind her to the stake. I have seen them give her ashes to the winds, regathering them again that they might scatter them yet more widely. But when they turned to exult I have seen her again meet them, face to face, clad in complete steel, and brandishing in her strong right hand, a flaming sword, red with insufferable light!"

The natural grace, the manly animation of the speaker, the way he suited the action to the word, were peculiarly his own, and full of fascination. He appeared to brandish in his own "strong right hand" the "flaming sword, red with insufferable light"; and his audience, tossed on the mountain waves of his eloquence, seemed to see him standing, unconquerable, the especial champion of freedom, who, no

more to be bound to the stake, was to exult in majesty and triumph forever. The daily papers, reporting the occasion, told of one individual in the audience, who, in the exuberance of his enthusiasm, leaped on the stage and cheered as he waved the flag of freedom before the throng.

During his short term in the Senate he delivered a few great speeches, in one of which occurred his oft-quoted tribute to the press. He also quickly won a high reputation for skill in debate, while his reply to Benjamin in January, 1861, evidenced great logical power as well as majesty of expression.

It surprised the country when Baker left the Senate for the "tented field." It was thought an unnecessary sacrifice. But Baker was under an uncontrollable impulse. He once told Samuel B. Bell that eloquence was not his forte. Bell, in astonishment, said: "If you can beat yourself as an orator, in another direction, you are certainly an extraordinary man." "Well, think what you may," replied Baker, "my real forte is my power to command, rule and lead men. I feel that I can lead men anywhere." He raised a regiment, and went into this his third warfare, as a Colonel. His career in the field was even shorter than his time in the Senate. He fell in his first fight, on the 21st day of October, 1861.

Baker's delivery was rapid, his voice melodious, his diction polished, his gesture free and full of grace. He had a splendid person, an eye full of fire, a noble forehead; and nose and mouth and chin were finely chiseled. His hair had long been very gray. On the platform his manner was marked by perpetual animation. He loved all arts, all sciences. His imagination was rich, his reading wide, his memory extraordinary. His countenance and bearing and his gray locks recalled the picture of Thorwaldsen, of whom it was said that when he moved in the midst of a crowd, it would separate as if it felt the presence of a superior being. His disposition was the perfection of amiability. In his most heated forensic and political contests he was never betrayed into saying an unmanly thing of an adversary. He was a giant before a jury. So great were his gifts of oratory that his knowledge of the law has been underestimated. But he was learned in the profession of his choice—a profession that opened so broad a field for the display of his varied powers.

Now and then, and here and there, for forty years there had been heard the promise of a publication of Baker's speeches, lectures, etc., in book form. It was reserved to the Editor of this History to issue these masterpieces in a pocket edition in 1899, under the title of "Eloquence of the Far West." There had been issued a "Sketch of the Life and Public Services of Edward D. Baker," by Joseph Wallace, (Springfield, Illinois, 1870). Those interested will find Baker's best political speeches in our libraries, in the files of the old Sacramento *Union* under dates of June 9-10; July 2-13-15; August 23-24; September 22-30—all in the year 1859; and October 26, and November 5, 1860. His "Atlantic Cable Oration," beautiful beyond eulogium; his moving address at the burial of State Senator William I. Ferguson (who fell in a duel), September 16, 1858; his nobler "Broderick Oration," September 18, 1859; the reply to Benjamin, the reply to Breckinridge, the American Theatre speech, the defense of Cora, are all given in full with prefatory statements, in the little book, "Eloquence of the Far West."

A broad street in San Francisco, not open at Baker's death, but now lined with dwellings, bears his name. It will recall his fame when the cemetery where his mortality lies has long ceased to be the city of the dead and been added to the domain of throbbing life.

Baker's wife, who survived him, lies by his side in Lone Mountain. His two sons died without issue. Two widowed daughters are living in Seattle, Washington.

In our book of Baker's Masterpieces (1899) we left it in doubt as to who was the author of a fine reference to the orator—on page 292 thereof. We have found that it was written by Calvin B. McDonald. He has been dead many years. He had been editorially connected with many newspapers, and wrote with much strength and beauty. The passage referred to was in an article devoted to reminiscences of Baker, which appeared in the San Francisco *Post*. It is as follows:

"Some years ago the people of San Francisco chased away an eloquent old man, who took refuge in the mountains of Nevada. He was afterwards brought back from the sacrificial heights of Stone River, a mangled, speechless prophet of freedom, and fifty thousand people laid him tenderly on the altitudes of Lone Mountain, within hearing of the eternal dirges of the ocean—while his glorious words echoed and still echo in the valleys and mountains from the fountains of the San Joaquin to the sources of the Columbia: 'Years, long years ago, I took my stand by freedom, and where

in youth my feet were planted, there my manhood and my age shall march.'"

The reader will be pleased with a more lengthy extract from the same article by McDonald, which we now give:

Colonel Baker went to Downieville in 1858, to try a great water case. He received a fee of $13,000, and I do not think he opened a law book or thought much about his argument until he found himself before the bar. There were two trials of the suit. During his first speech, Baker had carried away the jury, in a brilliant apostrophe to Water, which would have made the fortune of a temperance lecturer. At this remote time I am unable to say what relevancy the properties of sparkling water had to the title of the water-ditch in dispute, but the great advocate easily made the jury see. On the second trial, when Baker's turn for argument came, he arose, and was just coming again to the old fountains and cataracts, when the opposing counsel, Colonel R. H. Taylor, begged permission of the court to just suggest that since Colonel Baker's former happy speech, a number of honest miners had got into the headwaters of the stream and had riled it up, so that it did not sparkle a bit, and the former magnificent description of the upper premises had no longer any proper application. The court and spectators laughed; Baker was badly done up, and came very near making a failure; lost his case, and wouldn't speak to Taylor for a long time thereafter.

During the presidential campaign of 1856, when the Republican party made its first appearance, there was a very rough mining settlement of some five hundred people not far from Downieville, and only one Republican was known to exist among them. All the rest were Democrats, and most of them of a very rude character. Baker was stumping the State for the new party, and determined to go to this settlement, and make a speech, although he had been strongly advised that it would be dangerous to do so. The mighty sorcerer was never afraid of the forbidding faces of men, and he knew how to wake the latent divinity in the savagest of human souls. He accordingly went; and not without some misgivings, I accompanied him. When we were entering the village, the crowd about the "Bascom Grocery" of the place hauled down the American flag in token of hostility, but offered no further personal indignity. Baker did not seem to observe the flag episode,and after dark he mounted a carpenter's bench in front of one of the vilest grog-shops of civilization, and commenced. The rough audience had heard of him, and they wanted to hear him go. Not a word was spoken in the crowd; not a sign of applause or disapproval; and never did orator address an audience so unsympathetic and stolid. Baker keot on a half hour or so without any perceptible effect; and then, seeming to be gathering all his energies for one gigantic blow to split the obdurate rock, he began to pace along the bench, pouring out wave after wave, cumulative, majestic, and overwhelming. At length something like a tremor ran through the silent throng, and I could see them move uneasily under the spell of the enchanter. Some of them had belonged to Riley's regiment in the Mexican War. Baker had found that out, and looking up at the naked flagstaff, he referred to his own part on the battlefields of Mexico, and then, for full ten minutes, and, as it appeared, without a period in the structure of his speech, he rolled down a torrent of impassioned eloquence upon his transfixed audience,

"Like the dashing, silver-plashing
Surges of San Salvador,"

The orator standing in the majesty of his power, piling it up higher and higher, until some one in the crowd gave a sort of agonizing yell, as though unable to stand it any longer—and the stubborn rock was cleft for the outflow of the waters. The men yelled for I don't know how long, and made a rush upon the frail platform; Baker and his bench were overthrown, and when the orator had regained his stand, it was several minutes before he could be heard, and go on with his triumphant speech. I have never seen a crowd behave so frantically from similar emotions. It was another scene like D'Arcy Magee's description of St. Patrick's conquest of the Irish on the Hill of Tara, and there, as of old, the Irish heart, though hid in a rough tabernacle, showed its inability to resist the influence of true eloquence, and ever after, when Baker passed that way, the Irish miners cheered him at their work.

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We saw him no more—nothing but the mangled, soulless clay that came back from Ball's Bluff. And now, when the landward winds come in from the boundless ocean, to grieve and sob among the nobler monuments that have been reared to the ashes of lesser men, the Spirit of that Freedom which he worshiped with all the fervor of a great soul, droops beside a grave almost unmarked by gratitude and love, and seems to utter the pathetic interrogatory of the dying warrior of the Alleghanies, "Who is there to mourn for Logan?"

HUGH C. MURRAY.

The youngest Justice and the youngest Chief Justice who ever sat upon our Supreme bench was Hugh C. Murray. Born in St. Louis, Missouri, April 22, 1825, of Scotch extraction, he was reared at Alton, Illinois, where he received a limited education and read law in a lawyer's office. When twenty-one, he joined the army and served during the Mexican War as Lieutenant in the Fourteenth regular infantry. After that war he returned home and was admitted to the bar, but at once set out

for California. Going to Panama by steamer, and unable to get a better passage, he took a sailing vessel for San Francisco. The sailer proving intolerably slow, he got off with others at Cape St. Lucas and walked the long distance thence to his destination, which he reached in September, 1849. He at once commenced the practice of law. Quite soon he was very busy, but in a few months, the legislature elected him one of the Associate Justices of the first Superior Court of the City of San Francisco, a court that after dispensing justice for a few years, was itself dispensed with by act of law. Murray had brought with him from the East no fame, or influence, or means, but on the bench of the old Superior Court he displayed so broad a knowledge of law and such superior qualities as a Judge that his appointment to the Supreme bench by Governor McDougal in October, 1851, in place of Nathaniel Bennett, resigned, was a fulfillment of the hearty wish of the bar. He became Chief Justice upon the resignation of Hon. H. A. Lyons in 1852, and was elected his own successor by the Democrats. In 1855 he was re-elected Chief Justice by the Native American party. He died of consumption in Sacramento, while still Chief Justice, on September 18, 1857.

He had reached that high station at the age of twenty-eight, having become an Associate Justice two years earlier. Murray possessed a patient and powerful mind, capable of the severest investigation. Judge W. T. Wallace, who was attorney-general when Murray died, declared that the latter was gifted with an intellect that could grasp the mightiest subject; an analysis that solved, as if by intuition, the most intricate legal problems. His associate on the Supreme bench, who succeeded him as Chief Justice, testified to his quick perception, his moral courage, his justness, his frankness, and fidelity, and declared that his loss was irreparable. He was, withal, a dignified and impressive speaker on the stump. In his day candidates for the bench were not exempted from the custom of active, open electioneering in behalf of their party and themselves. We heard Murray on the stump at Sacramento in 1855. His utterance was distinct, deliberate; his voice strong and very agreeable to the ear and he wore an easy dignity that seemed to reconcile his candidacy to his surroundings. He was then speaking for the new American party, which was about to sweep the State. "Fellow-citizens," he said, "the Whig party is dead, and has been dead for ages, and the Democratic party, if not dead, is in the last throes of expiring agony." This sounded very well, indeed, and the agony part was given in a way that evoked loud laughter. But we felt like calling on the ermined orator to explain. His words, rolled out so grandly, were neither true of the one party, which wasn't *quite* dead then, nor of the other, which isn't dead yet.

Judge Murray's most elaborate opinion was his last—that in Welch vs. Sullivan, reported after his death, in 8 Cal., 155. Judges Terry and Burnett, who concurred in the judgment, slightly modified it at the next term. (See 8 Cal., 511.)

JOHN R. McCONNELL.

John R. McConnell was distinguished above all his professional brethren in the new West for breadth of reading and his fund of varied lore. He was born in Kentucky in 1826—in the same year with McAllister, Freelon, Pringle and Patterson. His ancestry was, on the paternal side Scotch-Irish, and on the mother's side English. He was the twelfth of thirteen children. When he was seven years old his father removed to Illinois and settled on a farm near Jacksonville. Losing his father the following year, and his mother two years later, he returned to Kentucky and lived in the family of a brother-in-law, in Bourbon county, until he became of age. In Illinois and Kentucky he attended several good schools, but his education was principally directed and his character molded by Professor Vaughn, who afterwards moved to Cincinnati and became a celebrated mathematician. Under this professor, McConnell attained rare excellence in mathematics, metaphysics and the classics. It was said of him that "in the higher mathematics especially he excelled, and nothing seemed to afford him more pleasure than a dash into the mysteries of curvilinear and conic sections."

Arrangements were being made looking to his appointment as cadet at West Point, when he concluded that he was not physically capacitated for a soldier's life, and turned to the law, the study of which he commenced under John Martin, a prominent lawyer of Bourbon county, Kentucky, in 1844. It is probable that no student ever took up the study with greater enthusiasm, or pursued it with more loyalty and zeal. He read almost incessantly, and being a man of fine mind, he attained a profound knowledge of the science. Indeed, he re-

mained a student through life, and his mind was overfed. For a short period he was at the Transylvania University, where he had the counsel of Judges Wooley, Robertson and Thomas A. Marshall. Ill-health prevented him from completing his studies at this institution.

At the age of twenty-one he commenced the practice of law in Illinois. Two years later he removed to Mississippi, locating at Natchez. There, while struggling to secure business, he took up Justinian's Institutes, and the whole body of civil law, to which he gave close and severe study.

He was a peripatetic legal philosopher. His transitions suggested perpetual motion. Not only was he a traveler through life, sojourning at different points in five different States, but in his local habitations, in home and office, he was on his feet almost continually. He had a passion for locomotion. A. A. Sargent has spoken of this predilection of McConnell. "He was very studious," said Mr. Sargent, "and fond of old and curious law. He used to wear a bare place in the carpet along the whole length of his office, where he paced up and down reading books. His methods were always honorable and aboveboard, and despite his overindulgence in stimulants, he was held in general esteem."

Of course, such a man could not escape the "gold fever." He reached California in 1849, coming overland, one of his companions being that daring martial spirit, Colonel Ned Sanders, brother-in-law of Haggin and Tevis, who was with Walker in Nicaragua, and who was killed in the Confederate army. McConnell settled at Placerville, and went to mining. He found already on the ground Frank M. Pixley, John Heard, and many others who since became widely known in law or letters. There was not a law book in the county. "The discussions and the decisions equally," said Caxton, "must have been rather crude and ill-digested, but we have reason to believe that the germ of the entire mining jurisprudence of California sprang from those early deliberations."

Early in 1851 McConnell removed to Nevada City in the richest mineral region of the state, and opened a law office. His accomplishments as a lawyer soon won him the respect of an able bar and secured him a valuable practice. In the estimation of many he led the bar of Northern California. "It is not going too far to assert," said Caxton, "that the briefs and arguments of John R. McConnell before the Supreme Court did more toward building up the mining law of this state than the labors of any other counselor upon this coast. To an inexhaustible fund of learning he added indomitable industry and a perception quick, sure and intuitive. Methodical almost to formality, he drilled his arguments into the form of logical sequence that in most cases amounted to mathematical demonstration. But his memory was, perhaps, the most remarkable trait of a most remarkable mind. It seemed to be absolutely infallible. Piled up in the deep reservoirs of his capacious intellect, he called forth these argosies of wealth at a moment's notice and launched them upon the tide of learning with an abandon that produced amazement."

With his vast reading and retentive memory it is not strange that McConnell failed to acquire a reputation for originality. His mind was continually burdened with the thoughts of others. He was constantly quoting or referring to great men—in argument and in conversation. He took great delight in oral discourse and in displaying the stores of his lettered wealth. Like a happy song bird jumping gleefully from bough to bough, he would in converse pass over the whole tree of human knowledge. As he loved to talk, so he demanded patient listeners, and the latter always had their reward. The impression of many that McConnell was but a book worm or a literary parrot, is not well founded—he read slowly, digested what he took in, and possessed great logical power. His voice was poor and his bearing had little grace. In argument he rarely attempted ornament—bottom facts were his objective point always. Neither in "shape" nor "gesture" was he "proudly eminent." He convinced by the direct action of his brain.

McConnell had considerable experience in public life. He was one of the earliest district attorneys of Nevada county, and in 1853 was elected attorney general of the State. Many years later he represented Los Angeles county in the lower branch of the legislature. In 1861 he ran for Governor as the candidate of the southern wing of the Democracy, and was defeated by Leland Stanford; and in 1864 he was, with Judge E. W. McKinstry and Judge W. C. Wallace, an unsuccessful candidate for the supreme bench of the State of Nevada.

In the gubernatorial contest in this State in 1861, the total vote was 119,730—Stanford (Republican) receiving 56,035, McConnell

(Administration Democrat) 32,750, Conness (Douglass Democrat), 30,944.

During his term as district attorney, one Miller had assaulted a clergyman, and receiving an unexpected thrashing for his temerity had the reverend man arrested for battery. McConnell, learning the facts, declined to prosecute. The justice before whom the preacher was brought—Doughterty, "Old Zeke"—directed the sheriff to call McConnell. "Somebody has got to prosecute this man," said the justice, "or I'll let him go." McConnell appeared and made a quasi prosecution. The case being submitted, the justice said: "I think this was a fair fight. Miller commenced it and got a good licking. It was good for him. The prisoner is discharged."

Mr. Sargent tells this anecdote of McConnell's early professional life:

He had a client, Dr. W., whose litigation was often of an important character. On a trip below the doctor had borrowed $1,000 of one of the supreme judges. After judgment in the district court in a certain case which was about to be appealed to the Supreme Court, McConnell said to Dr. W., "I wish you would pay that $1,000; we have got to get to the Supreme Court." "Mac," said the doctor, "you don't know anything about human nature. If I were to pay that money, the Judge would have no further interest in me."

McConnell in 1853 defended one George W. Hall, tried on a charge of murder. The alleged victims were Chinamen, and the accused was convicted on Chinese testimony. McConnell made a point as to the admissibility of this kind of evidence. The State law then declared that "No Indian or negro shall be allowed to testify as a witness in any action in which a white person is a party." McConnell took the position that the word "Indian," in the sense intended by the legislature, applied to the whole Mongolian race, and therefore Chinamen were not competent to testify against white persons. This view was sustained by Chief Justice Murray in a very interesting opinion, in which Judge Heydenfeldt concurred, and from which Judge Wells dissented.

McConnell was attorney general during the years 1854-55. During this period he made a visit to the East and South, leaving the office in charge of Hon. William M. Stewart. Mr. Stewart was his law partner, and had prepared himself for the profession in his private office.

McConnell removed to Virginia City, Nevada, in 1863, at the height of the excitement over the Comstock lode. He was there about two years, during which period we had a brief partnership with him, and was daily entertained by his learned talk. He then adhered to the habit, which Sargent observed in early days, of walking while reading. His thinking was done on his feet. One of his peculiarities was to ignore all blank forms used in pleadings and conveyancing. He despised all books of forms, and the volume entitled "Every Man His Own Lawyer," filled him with loathing. He prepared his papers with the statutes and the reports before him, and it was a keen lawyer who could find in them a flaw. But he attracted a very limited clientage in Virginia City. He was not often seen at the bar, and was not connected with any of the great mining cases which brought extensive fame and fortune to his old partner, Stewart. He was then little more than a shadow of his former self, having become a slave to opium.

Returning to California, McConnell resided and practiced at different times in Nevada, Sacramento and Los Angeles. He was three times married—first, to Miss Rebecca Cross, of Nevada City, California; second, to Miss Ann Eliza Moore, of Fayette county, Kentucky; lastly, to Miss Sallie B. Darby, eldest daughter of Dr. J. Curtis Darby, of Lexington county, Kentucky, who survived him. He died in Denver, Colorado, in 1879, leaving a small estate.

C. TEMPLE EMMET.

Christopher Temple Emmet was born in New York city in 1823. He was the son of Robert Emmet, who was a distinguished lawyer of that city and a Judge of the Common Pleas; and was a grand-nephew of the great Irish patriot, whose name his father bore. Mr. Emmet was educated at Flushing, Long Island, in the school of Bishop Hawks, who was the father of W. W. Hawks, once a State senator from San Francisco, a man of brilliant parts, being a polished and animated public speaker, who died of consumption in Honolulu, many years ago. Hon. Ogden Hoffman was among Mr. Emmet's schoolmates. From Flushing he went to the University of Virginia, chiefly to study medicine under his uncle, John P. Emmet, a medical professor there. Having graduated as a physician and surgeon, he returned to New York city, but finding medical practice distasteful to him, he studied law in

his father's office. Shortly after being admitted as a counsellor at the bar, having three years earlier been admitted as an attorney, he started for California in a sailing vessel. His cousin, John Thomas Emmet, his brother, and Herman Le Roy, were with him. They suffered shipwreck, and were detained at Rio de Janeiro six months. His cousin and brother returned to New York.

C. Temple Emmet commenced law practice in San Francisco in 1849. He became counsel for some English capitalists, who went into contracts for leasing and operating mines on a large scale, with costly machinery, near Grass Valley. There were several companies of these moneyed Englishmen, at the head of one of them being Sir Henry Hunter. They died out by degrees in a few years.

Mr. Emmet defended, before Alcalde Geary and a jury, the first man ever legally tried here for murder, having been appointed by Geary to that duty. The man was hung. Among those with whom Mr. Emmet practiced law in partnership, were Charles T. Botts and Alexander Campbell. He was one of the originators of the old French Bank, and for a time was the real manager thereof, although not named as such. In 1867 he left the bar with a fortune of a million dollars, and went into the California & Oregon railway project, inaugurated by Ben Holladay. In that interest he made several visits to Washington city. That enterprise stripped him of his fortune. Meanwhile he had married, late in life, at New Rochelle, N. Y., a Miss Temple, a relative. The lady survived him, with five daughters and a son.

Mr. Emmet belonged strictly to the conservative type of character. This is said simply to state his class. Of course, both radicals and conservatives are essential to the wealth and welfare of the state and society. His conservatism even entered into his dress—he clung to his old-style English shoe and the other peculiarities of attire of earlier days and older lands, refusing to sacrifice his ideas of comfort to fashion. He was one of those who live "with their faces turned nobly to the past."

An instance of his great will power is known to the few who were his close friends. In the early years of the State he was a high liver, but did not visit bar-rooms—he used to love his wine, cigars and cards in the company of men of strong purse and parts, the monarchs of our bar and exchequer. At cards he met great losses. Once, having made a "big winning," he threw cards away forever. After his marriage, he eschewed liquor in every shape, except when an honest physician prescribed it, and smoked very little. He declared that the most important lesson that could be impressed on a child's mind was the necessity of rigid self-denial. He practiced it always, and illustrated its fruits.

In 1873 Mr. Emmet resumed law practice in San Francisco, and soon gathered a valuable business, becoming attorney for leading banks and capitalists and the British consul. In law business he was usually a counsellor, and kept to his chambers. He avoided politics, had few intimates, was reserved and sedate. He was no flatterer or simperer, and could not be amused with nonsense. He understood his business thoroughly, was really a master of his science; painstaking; had good judgment, and was an invaluable adviser. He shrank from the noise and glimmer of public trials and public life. Emmet, as a speaker, was cool, cogent, logical; he touched no pyrotechnics; his expression was severely chaste; he was at his ease with Greek, Latin, French and Spanish, and was generally an accomplished scholar.

A few months before his last illness began, he moved into his new homestead near San Rafael, his grounds comprising sixty acres. Fond of fresh air, he was an athlete in physical exercises. In person he was large and finely built, with blue eyes, light complexion, light hair, iron-gray whiskers, and English in appearance and style of dress, as well as in tastes. He had more domestic animals and servants about his house than almost any other man in the State. Fidelity to his profession and friends, gentleness to his dependents, and devotion to his family, marked his life. He was a man of generous soul and good example. He died while on a visit to the East in February, 1884. His remains were brought back by his family and interred at his home in Marin county.

EUGENE CASSERLY.

Eugene Casserly was born in the county of Westmeath, Ireland, in 1822. His family was a branch of the O'Connors, and was once known as the O'Connor Casserlys from a marked personal characteristic in one of his progenitors. His father and grandfather were school teachers. The latter was a leader in the rebellion of 1798. His participation in that

fruitless struggle ruined him in fortune, and nearly cost him his life.

Eugene Casserly came to the United States at the age of two years, with his father and mother. The father, Patrick Sarsfield Casserly, was a true Irishman. Landing in New York, he went straight from ship to court-room and declared his intention to become a citizen of the United States, leaving the matter of lodgings to be attended to afterward. Patrick Sarsfield Casserly was a scholar. His classical attainments were great, and his intelligence of a superior order. He opened, in New York city, the "Chrestomathic Institute." Many of the pupils of this school are now scattered over California. The elder Casserly was "like classic Hallam, much renowned for Greek." He introduced Eugene to the noble tongue at four years of age. He was a severe man and punished refractory scholars with delightful *sang froid*. It is told of him that when he found an offense had been committed and was not able to discover the culprit, he would impose upon Eugene vicarious punishment.

The son, like the father, became an excellent classical scholar. At nineteen he aided his father in the preparation of "Jacob's Greek Reader," a standard text-book. He aided in the conduct of the school until he attained his twentieth year, when he left home and entered for himself upon life's battle.

His promising qualities had attracted the attention of Dr. Hughes, then a bishop, afterwards Catholic archbishop of the State of New York. In that reverend man he found a friend and adviser. He found the same in Charles O'Conor.

He had studied law and had been admitted to practice in 1844, but turned to the press for a time. He soon became editor of the *Freeman's Journal*, and a contributor to several papers in New York, Boston and Washington. One of the journals for which he wrote was the famous old *Democratic Review*. Who published it? Henry G. Langley, afterwards the compiler of the San Francisco "Directory."

Mr. Casserly had just determined to give his whole attention to his "jealous mistress," the law, when the California gold fever broke out. He had studied law in the office of John Bigelow.

During this brief practice at the New York bar, Mr. Casserly was elected to the place of corporation counsel, or what we call here city attorney. This was a very profitable and responsible position, and Mr. Casserly was called to fill it at the age of twenty-seven. At this age he became the legal adviser of our greatest city.

Mr. Casserly arrived in California in August, 1850. A few months later (December 8, 1850), he formed a journalistic partnership with Mr. Benjamin R. Buckalew, and started the *Public Balance*, a daily paper, under the firm name of Casserly & Co. This partnership soon dissolved—in truth, the two partners quarreled. And Mr. Casserly, on January 18, 1851, commenced the publication of the *True Balance*. He soon resolved to abandon journalism forever, and to renew legal practice in earnest. For thirty years thereafter he followed his profession continuously, and with extraordinary success.

On May 1, 1851, the legislature elected Mr. Casserly State printer. The then incumbent of the office was Mr. George K. Fitch, afterwards of the San Francisco *Bulletin*. Mr. Fitch refused to vacate the office, and litigation followed. The case went to the Supreme Court, and is reported in full in the first volume of California Reports. One of the ablest briefs in all the reports is there to be found, written by Mr. Casserly, who secured the place to which he had been elected.

In December, 1867, Mr. Casserly was elected a United States Senator from California, for the term of six years from March 4, 1869. In the fall of 1872, having served about two-thirds of his six years' term, he resigned his seat in the Senate. It should have been stated that when the Democratic party divided at the outbreak of the Civil War, Mr. Casserly was one of the most advanced leaders of the war party.

Leaving the Senate, he resumed law practice in San Francisco, and continued business in a quiet way for a few years, when he retired permanently from political and professional life.

An intimate friend once described him as "a man of medium height, with a well-knit frame and a clear, deep-set, brown eye. The size and conformation of his head indicate a large and well-balanced brain. His temperament is ardent, yet well restrained. His hair is prematurely white. His private life is as spotless as his public character."

In 1854, at San Francisco, Mr. Casserly married the only sister of Mr. John T. Doyle. He died at San Francisco, on the 14th day of June, 1883. His widow is still living in that

city, and also their son, John B. Casserly, who is an attorney-at-law and a member of the Board of Education.

O. C. PRATT.

O. C. Pratt was born in Ontario county, New York, on the 24th day of April, 1819. In the local public schools and academies he acquired much knowledge of the classics and mathematics, and was a very good English scholar at the age of seventeen. In 1837 he entered the United States Military Academy at West Point, as a cadet by an appointment of President Jackson. He remained there two years. He had but little taste for military studies, except when connected with the higher mathematics. He resigned his cadetship with a purpose of preparing himself for the bar. He read law in the office of Samuel Stevens, a bar leader of Albany, and being admitted to the Supreme Court of the State after two years' study, he began the practice at the age of twenty-one at Rochester. He formed the acquaintance there of Fletcher M. Haight, who was afterwards a United States Judge in California, and became his partner. He removed to Galena, Ill., in 1843. There, in addition to a fine law practice, he acquired considerable reputation as a public speaker on the Democratic side in the presidential campaign of 1844. In 1847 he was a member of the convention, which revised the constitution of Illinois. In the following year he accepted a commission under the Federal government to investigate certain charges against an army officer at Mann's Fort, on the Arkansas river. He went to that place, and, after reporting that the charges were not sustained, was requested by the government to proceed to Mexico, California, and Oregon, as a confidential agent of the government in certain matters. With an escort of sixteen men, he crossed the plains, having many brushes with the hostile savages, and arrived at Los Angeles as early as August, 1848. He visited San Jose and San Francisco, and proceeded to Oregon, where he assumed the office of Associate Justice of the Territorial Supreme Court, to which President Polk had appointed him. His colleagues had not yet arrived from the East, and he was thus the pioneer Judge of Oregon.

Judge Pratt removed to San Francisco in June, 1856. He there formed a partnership with Alexander Campbell, who had been prominent at the bar in Oregon. His partnership lasted three years. He was Judge of the old Twelfth District Court for the term which expired December, 1869.

Judge Pratt became a man of large wealth. The foundation for it was laid in this way, according to one of Bancroft's biographical works: During a trip from Portland to San Francisco, in company with Captain Crosby, it chanced that a discussion arose as to what would be the probable price of lumber on their arrival in the latter city. Pratt suggested that a cargo should be worth at least twenty-five dollars a thousand. "I wish you would guarantee me that figure," replied his companion. "Well," rejoined the other, "there is no reason why I should guarantee you anything, but it seems to me—and here he gave his reasons—that lumber ought to be worth there when we arrive, fully twenty-five dollars a thousand." After some further conversation, Crosby asked whether he would purchase from him the cargo on board when laid down at San Francisco at twenty dollars a thousand. "Yes," said Judge Pratt; and thereupon a contract to that effect was drawn up and signed by both parties.

On reaching her destination the vessel was boarded by Captain Folsom and W. D. M. Howard, the former of whom, as purchasing agent for the United States government, offered him $250 a thousand for the cargo. It was declined, as was also a still higher offer made by Mr. Howard, and the lumber was finally sold at $400 a thousand.

The Judge bought six square leagues of rich alluvial land in Butte and Colusa county, and went to farming and cattle-raising on a large scale. At the end of his term as District Judge at the close of 1869, he was one of the candidates of the Republican party for Supreme Judge, but was defeated with his party.

In 1875 his wife obtained a divorce from him in San Francisco. She asked for a division of his property. George W. Tyler was her attorney, and Joseph P. Hoge was attorney for Judge Pratt. The latter made only a formal opposition, and Mrs. Pratt was awarded property worth $700,000. Tyler fixed his fee at $10,000, which she refused to pay. A jury awarded him this amount, and Tyler filed an enormous cost bill. Mrs. Pratt paid the judgment with costs, on the advice of Samuel M. Wilson. The parties then had three grown children. In 1877, at New York city, Judge Pratt married his second wife, Mrs. L. E. Jones, of San Francisco. There was one child of this marriage, a son. The Judge was

a man of very wide information, of great personal and professional pride, was a most entertaining talker, and had a somewhat haughty carriage. He died at San Francisco, on October 24th, 1891, aged seventy-two years and six months. His estate was worth about one million dollars.

ELISHA COOK.

Elisha Cook was "a burning and a shining light" at the San Francisco bar for twenty years. It has been the fortune of few men in California to win such lasting and distinguished celebrity. When

> "The mossy marbles rest
> On the lips that he has pressed
> In their bloom;
> And the names he loved to hear
> Have been carved for many a year
> On the tomb,"

A learned profession will still unite to keep his memory green. His argument and conduct of great cases have been preserved in imperishable print, and will be studied and admired in remote eras. Too soon was he removed from the broad field of his triumphs. His hands were full, his children were not reared, he had not known surcease from toil, nor perfected the plans of his life when his work was stopped. But so active was his career, so crowded with masterly performances, so rewarded by success, so marked by exhibitions of unbending will and sense of duty, that the record which he left behind was at once remarkable and unique, peculiarly worthy of study, and stretched over a most eventful period.

He was born in Montgomery county, New York, in the Mohawk valley, August 7, 1823. He was one of a family of bar leaders, trained his eldest son to the law, and was another contribution by the bar of New York to that of California. His oldest brother, Eli Cook, long headed the bar of Buffalo, where he was mayor for two terms. Eli Cook also came to California in 1849, and decided to locate in San Francisco. He returned to Buffalo to settle up his business. While engaged in doing so, new business of great value rolled in upon him, which he could not refuse to accept without seeming to throw away a grand opportunity. He soon found himself intrenched in Buffalo more firmly than ever. A gentleman who saw him in New York city, on his way back to Buffalo, describes him as being nearly six feet two inches tall, of splendid presence, witty speech, and engaging manners, and a leader of men as well as of his profession. He died there many years ago, and his professional mantle happily fell upon his brother, Josiah, the fourth son, who has long had a fine practice at Buffalo.

Elisha Cook was graduated from the Manlius Academy, at which he was distinguished and complimented for his industry and alertness of mind. On leaving the academy he was invited by his brother Eli to Buffalo, and advised to study law. He studied law in his brother's office for one year. He was then only sixteen, and conceived the idea that he was not adapted to the legal profession. After trying mercantile life a short time, he returned to his brother's office and resumed legal studies.

In due time he was admitted to practice, and for awhile was in partnership with Mr. Daniels, a rising young attorney. Judge Nathaniel Bennett was then in partnership with Eli Cook. He afterwards became a Supreme Judge in California, and Mr. Daniels won the same dignity in New York. When Judge Bennett removed to California Eli and Elisha Cook practiced together for a short time under the firm name of E. & E. Cook.

Judge Bennett had been in California only a few months when Elisha Cook determined to follow his example. At the age of twenty-seven, the latter left his mother and relatives and gave up a good business and flattering prospects, under the impulse of the gold fever. He arrived here early in 1850, and settled in San Francisco, where he lived and followed law practice until his death, which occurred in that city December 31st, 1871. He was a man of great professional pride and ambition, and in removing to San Francisco he aimed to win the leading place at that bar, corresponding to that held by his brother in Buffalo. Joseph Cook, since so prominent at the Buffalo bar, also came to San Francisco some years later, practiced in partnership with his brother Elisha for a short time, but failing health compelled his return East.

Mr. Cook left a widow and nine children. His eldest son, Hon. Carroll Cook, is a Judge of the San Francisco Superior Court. William Hoff Cook, of the San Francisco bar, is his second son.

HENRY H. BYRNE.

Henry Herbert Byrne, whose period at the San Francisco bar covered the eventful years

1850-71, was born in New York city. His father was Irish, and his mother English. He was well educated at a French Catholic college in Canada. Admitted to the bar in his native city, he removed to San Francisco at the age of twenty-six, without money or reputation. He soon formed a partnership with T. W. Freelon, and during all his professional life afterward was associated with that gentleman, except when the latter was on the bench. Byrne was district attorney of San Francisco for the two terms 1851-52, 1853-54, and also the two terms, 1868-69, 1870-71. In that office he brought many distinguished rogues to justice, some of whom "felt the halter draw." He won encomiums from bench, bar, the community and the press. He was an able, faithful and diligent minister of the people. He was known only as a criminal lawyer.

The most important trial in which he appeared was that of Mrs. Fair, charged with the murder of the prominent lawyer, A. P. Crittenden. He was then district attorney. The trial was opened March 27, and closed April 26, 1871. Byrne made the closing argument for the prosecution, consuming two days, and this was published in full by Marsh & Osbourne, the official shorthand reporters, with all the proceedings of the trial. It was certainly an admirable effort, a fine exhibition of his power of invective, his unimpeded flow of speech, his subtle reasoning, the precision of his ideas and his varied learning. It is full of interest, and attractive for all classes of readers. His quotations were many, but not lengthy, and not unduly frequent, considering the great length of his speech. He was, however, corrected several times by Mr. Cook, his chief opponent, in statements of the evidence. To give edge to his points, beauty to his periods and emphasis to his conclusions, he quoted from or made allusions to Byron's "Don Juan," Pollock's "Course of Time," Byron's "Childe Harold," Lord Brougham's "Opinions on Politics, Law, Science, Education, Literature," etc. "The Confessions of Rousseau," "Sappho," "The Monk" of Matthew Lewis; "Little's Poems," Mohammed, Milton, Shakespeare, Esculapius, Hippocrates, Locke, Jeremy Bentham, Edwards, Kant, Aristotle, Thackeray Dickens, Michelet's "L'Amour," Marc Antony, Cleopatra, Lord Nelson, Lady Hamilton, Telemachus, Diana, Cæsar, Lucrezia Borgia, and Daniel Webster. This address abounds with beautiful periods, and striking passages, but it must not be supposed that because of its ornament it was not logical. It was argumentative, forcible, convincing. In reminding the jury of their responsibility, he said: "The juror's oath is not a by-play. It is held most solemn by all Christian communities where the jury system prevails. It is that chain which binds the integrity of man to the throne of eternal justice. And when that chain is broken, conscience swings from its moorings, and society is again in a condition to resolve itself back into the original chaos out of which it was carved."

In examining the testimony of the medical experts for the defense, which was to the effect that the accused was insane, he declared: "If these theories are correct, why the mothers of posterity will produce nothing but a band of fools. I am rather inclined to think, after hearing the testimony of some of these physicians, that they have read "L'Amour" of Michelet, a crazy Frenchman, who, in the first instance, idealizes women, taking from them their blood and their brains, and then turns around and bows down before them as an idolator. There is no practical sense in the theories advanced. It is a reflection upon our mothers, upon our wives, and will send down to posterity a nation of fools, if these theories are correct." Alexander Campbell was associated with Byrne in this case, and made the opening argument for the prosecution. The prisoner was convicted and sentenced to be hanged, but secured a new trial, and before she was again placed at the bar Byrne had gone out of office and passed away from earth.

Byrne died at San Francisco, March 1, 1872, a few months after the close of his last term as district attorney, aged forty-eight years. He had no relatives in California, and no immediate kinsfolk anywhere. A younger brother, Lafayette M. Byrne, died before him in San Francisco. He had long enjoyed a valuable practice, and had made some judicious investments in city real estate. His estate was appraised at $77,798. It proved, before final settlement to be worth $90,000. All of this, after making a few small legacies, he bequeathed to his personal friend and brother lawyer, already well off, E. R. Carpentier. The minor legacies were: To David Scannell, Elijah Nichols, and H. H. Byrne Ciprico, a little son of George Ciprico, the barber, $1000 each, and to Mary Cross $5000. David Scannell had been sheriff in the days of the great vigilance committee. Three of Byrne's nieces—Mary E. Holcomb, Catherine F. Holcomb and Julia H. Howard, daughters of a deceased sister—came from Connecticut and contested the will

on the grounds of unsoundness of mind and undue influence. They were offered, and accepted from Mr. Carpentier $2500 in full settlement before trial.

Excepting James King of William, David C. Broderick, General E. D. Baker, and Thomas Starr King, no man was ever buried in San Francisco amid such genuine manifestations of popular sorrow as was Byrne. An immense concourse of mourners attended at St. Mary's Cathedral, where Father Spreckels delivered a discourse at once impressive and ornate. Byrne had had Catholic doctrines instilled into his young mind, but through life after his maturity he claimed to be a free thinker, being a close reader and admirer of Darwin, Spencer, and others of that school. Byrne dwelt apart from all churches, creeds and religious forms, but as the supreme hour approached, after stoutly holding out against many friendly importunities, he permitted a visit from a Catholic clergyman, to whom he made confession. Personally, he was perhaps the most popular man who ever lived in our metropolis—more popular than Baker. Baker dazzled the multitude from an eminence; Byrne thrilled them by actual contact. He had the faculty—not faculty, but fortune, because it was an attribute unconsciously possessed—of enlisting the affections of those with whom he conversed. Mention his name in San Francisco today, in any knot of men, and some one will say, "I knew Byrne intimately." The average man, after having two or three interviews with him, seemed to feel that he had been admitted unreservedly to his confidence. His funeral procession embraced hundreds of the poorer classes, in humble vehicles and on foot.

Byrne was short of stature, but comnactly built, with his head set firmly on his shoulders. His eyes and beard and hair were jet black, the latter abundant and curly. He walked with his head and shoulders thrown back, and his carriage was somewhat stiff. One hand was invariably pocketed. He had the aspect of great physical strength and solidity. He did not look the lawyer at all. His dress was plain and in good taste. His voice was most peculiar; it was sharp, harsh, screeching, a great impediment to his popularity as a speaker. No man with such a voice could attain distinction on the stump or in the lecture-room, unless endowed with abilities of the very first class as well as all the graces and magnetism of person. Yet he made the most of it. He had severely cultivated it under the ablest professors of voice culture, and it had these compensations: he never tired in speech, was never hoarse, and was always distinct. Nor did his voice steadily repel, but the auditor, on hearing him a second time, would gradually become accustomed to its tone, and forget its oddity. Music he had studied *con amore*. He *knew how* to sing, and yet *could not* sing—his voice would not permit it. As to correctness of rendition, he could give you almost any popular air from any leading opera. He was quick, bright, apt at repartee, convivial, and a lover of fun.

He spoke off-hand always—that is, he never wrote out anything; but he marshaled his ideas and prepared his plans. He was a powerful prosecutor, watchful, all-seeing, intrepid, not afraid of man or devil. His invective was scathing—it made you shudder at times. Before a jury he was very rarely eclipsed. In force, animation, beauty of imagery and illustration, his jury addresses yield to Baker's only. While he could not stand against the silver-tongued orator before the masses, or on the stump, or in great conventions, yet did he at times burst into eloquence as lofty and impassioned as that of Baker himself.

One day in Judge Freelon's court, in 1852 or 1853, when Byrne was district attorney, Governor Henry S. Foote demurred to an indictment written with Byrne's puzzling pen, on the ground that it could not be read, and did not appear to be in the English language. Judge Freelon called for Foote's demurrer, and, examining it, observed that its chirography was, if possible, more of an enigma than that of Byrne's indictment. Solomon could hardly have done better than the Judge in this perplexity. He directed each counsel to read his own pleading, which, being done, the demurrer was overruled. If Governor Foote thought the indictment was expressed in Irish he heard Byrne perform the feat of reading it in English, with uninterrupted flow of language from beginning to end.

In a half-jocular way, Byrne was in the habit of boasting that he was descended from an Irish king. He was wont to attach to himself certain persons, who accompanied him in his pleasures at tables, etc., and whom he made his butts—whose flattery, however, was not altogether distasteful to him, but was taken as return for their entertainment. One of these was a certain well-known "Count." Lafayette Byrne said, one happy night, that he had never really believed in his descent from an Irish king until he saw that his distinguished brother

kept a fool—a practice, he understood, of royalty in the old times.

In 1854, in San Francisco, Byrne met and married Matilda Heron, whose almost faultless impersonation of Camille afterwards won her a widely extended celebrity. They married in haste, and repented at leisure, if ever a couple did. So little was known of this marriage that after Byrne's death, some eighteen years later, when Matilda Heron came from New York to contest his will, the announcement created universal surprise. Although he always ignored it, the marriage was a solemn fact. Colonel Philip A. Roach was an intimate friend of Byrne both in New York and San Francisco. When the actress told her story to the public in 1872, Colonel Roach made an investigation and found that she had been duly married to Byrne by Father McGinness, of St. Patrick's church, at San Francisco, in 1854. The light that was thrown upon this unfortunate alliance came from the sentimental actress herself, in an affidavit filed by her in the Probate Court, August 28, 1872, in the matter of her contest of Harry Byrne's will.

There was a compromise effected between Mr. Carpentier, the executor and legatee befor named, and Matilda Heron. Mr. Carpentier's final account shows that Matilda Heron received $1000. The fact is, she actually received $5000.

The Mary Cross to whom Mr. Byrne left $5000 was a young woman from Philadelphia, who learned the millinery art in the same institution with Matilda Heron, through whom she became acquainted with Mr. Byrne. She was Mr. Byrne's housekeeper in one of his houses, corner of Howard and Twelfth streets, and in his sickness showed him unremitting attention. He really was indebted to her for many acts of kindness. He was not married, and in periods of sickness and gloom, consequent upon excess of conviviality, he invariably sought her house and found hospitable welcome.

NATHANIEL BENNETT.

Nathaniel Bennett, always recognized as one of the ablest lawyers and jurists which the state has known, and who was a justice of the Supreme Court in 1849-1851, was born at Clinton, Oneida county, New York, on the 27th day of June, 1818. When he was three or four years old his father purchased several tracts of land of considerable extent, in Erie county. On one of these tracts he settled as a farmer, moving his family thither from Clinton. Nathaniel passed his early boyhood on this farm, and in his twelfth year was sent to Buffalo to a military school, then lately established by the celebrated Captain Partridge, who had been for more than twelve years principal of West Point Academy.

Nathaniel was at school at Buffalo for over two years. The pupils of this school were daily subjected to regular military drill and exercise, after the fashion at West Point. From Buffalo, young Bennett was sent to the Academy at Canandaigua, under the direction of Mr. Howe, where he continued his studies for about a year. One of his schoolmates at Canandaigua was Stephen A. Douglas. After leaving the academy, young Bennett was sent to Hamilton College, where he remained one year; at the end of that time he entered Yale College.

Mr. Bennett read law at Buffalo, New York. He was admitted to practice as an attorney in 1840, and as a counsellor in 1843. He practiced at Buffalo from 1840 until the fall of 1842, in partnership with Eli Cook, a brother of Elisha Cook, Esq., of San Francisco. He then determined, as his health was somewhat impaired, to make a tour through the Southern states. In 1838-9, he had traveled through Ohio, and visited many parts of Indiana and Kentucky, but had beheld no spot for which he was willing to exchange his own home—Buffalo. Up to the time of his starting upon his second and longer journey, Mr. Bennett had always been an ardent Democrat, and a great admirer of the South and Southern institutions. A radical change was soon to come over his feelings. He started on his return trip. He rode on horseback through Eastern Louisiana, through Mississippi, Georgia, Tennessee, Kentucky, Virginia, Pennsylvania, and New York, to Buffalo. In referring to this tour, Judge Bennett stated to the editor of this History, that it wrought a great change in his views concerning Southern institutions and the Southern country and people.

Upon his return home, Mr. Bennett applied himself closely to the study and practice of his profession. When the political organization known as Barnburners first arose, under the leadership of Silas Wright, Benjamin F. Butler, Joseph White, John Van Buren, and others, Mr. Bennett embraced the principles of the new party with enthusiasm. He was a member of the celebrated Barnburners' convention which met at Buffalo in the summer

of 1848. In addition to the men just named above, Charles Francis Adams, Charles Sedgwick, Alvin Stewart, of Utica, and James W. Nye, afterwards United States senator from Nevada, were delegates to the convention, and a great many others, among whom were some of the most noted men of the Democratic party, who had determined to sever their connection with the latter organization, if it continued in the course which it was pursuing. The convention nominated Martin Van Buren for the presidency. The result of the election is known. Silas Wright, truly a great man, did not live to see the triumph of his principles. Although wedded to political tenets repugnant to a very large majority of his fellow-citizens, and dying in the effort to engraft his views upon hostile public sentiment, millions of devoted friends and magnanimous foes lamented his death, and the flag of his country drooped in melancholy appreciation of the national loss. Judge Bennett was one of those whose hearts were cast down by the tidings of his death, and who labored patiently and quietly for the vindication of his political principles.

From 1843 to the summer of 1848, Mr. Bennett was exclusively engaged in practicing law. Judge Bennett came to California in 1849, landing in San Francisco on June 30. He commenced his California life in digging gold on Tuolumne river, on a bar about two miles below Jacksonville, at the mouth of Wood's creek. This bar proved very rich, and being worked by a goodly number of men, yielded an immense amount of gold. Mr. Bennett was very fortunate at mining; he continued at his new occupation for about three months, when in response to the solicitations of a friend practicing law at San Francisco, he determined to repair to that city, and resume the practice of his profession. Accordingly, in the fall of 1849, he returned to San Francisco, where he formed a law partnership with the gentleman who had induced him to leave the mines. This gentleman was the Hon. John Satterlee, afterwards Judge of the Superior Court of San Francisco, one of Judge Bennett's earliest and best friends, and a member of his company, but who had crossed the Isthmus in advance of the rest. Soon after the adoption of the State constitution, he was elected a State senator from San Francisco. He had been in his seat only a few days when he was elected by the legislature one of the Associate Justices of the Supreme Court, being chosen for the longest term, six years. During his brief senatorial career, and immediately thereafter, he virtually directed the determination of an important question then agitating the mind of the legal fraternity. A petition signed by many practicing members of the San Francisco bar, had been submitted to the legislature, praying that that body would retain "in its substantial elements, the system of the Civil Law." For Judge Bennett's connection with this subject, see the article entitled, "Adoption of the Common Law."

Judge Bennett continued on the Supreme Bench for about two years, when he resigned, his salary being insufficient to support him in comfort. The nominal salary of a Supreme Judge was ten thousand dollars per annum, payable quarterly; but soon after the organization of the State government, the scrip of the State rapidly declined, as might have been expected.

In October, 1850, the glad tidings came slowly over the waters, that California had become a sovereign State in the federal sisterhood. The enthusiastic citizens of San Francisco celebrated the event with great pomp and ceremony. Judge Bennett was selected to deliver the oration. His effort on that occasion was printed in full in the columns of the *Alta California*, and other newspapers of the city. It is remembered with affectionate admiration by the surviving pioneers of the State, and is treasured among the archives in the county recorder's office of San Francisco. It became a favorite piece for declamation in our schools.

In 1852-3, Judge Bennett was absent from the State for eighteen months, on a visit to the Eastern States. Upon returning, he resumed the practice of law. He devoted himself closely to his profession, and paid but little attention to politics until the formation of the Republican party. He was present and took part in the first Republican meeting held in San Francisco; and was a delegate to the first Republican State Convention held at Sacramento, being elected president of that body. He was nominated for Judge of the Supreme Court on the first Republican State ticket voted for in California, when Hon. Edward Stanly was the Republican candidate for Governor. Being defeated, with the remainder of the Republican nominees, Judge Bennett paid a second and longer visit to his old home, and returned to San Francisco after an absence of three years, in 1860. Since that time he was in continuous practice at the San Francisco bar until his death. From 1866

until 1868, Judge Bennett was in partnership with Elisha Cook, Esq., brother of his former law-partner in New York. Later, he was the senior member of the law firm of Bennett, Machin & Owen.

At the celebration in May, 1869, of the completion of the Pacific Railroad, by the people of San Francisco, Judge Bennett had the honorable task assigned him of delivering the oration on the occasion. In grandeur of thought, splendor of diction, and beauty of expression, this effort will compare favorably with his address delivered in 1850, to which allusion has been made. Thus, it will be seen, the name of Nathaniel Bennett will be intimately associated through coming time with the history of the two grandest events which in his age affected the interests and destinies of his adopted State.

Judge Bennett died at San Francisco April 20, 1886. His estate was appraised at $39,500. See the article on the "Bonanza Suits."

JOHN S. HAGER.

John S. Hager was born in New Jersey, March 12, 1818. His ancestors on both sides were German Protestants, who first retreated to Holland, and from that country emigrated to America. They landed at Philadelphia in the year 1707, and with other German colonists, finally settled on the south branch of the Raritan river, in an uninhabited portion of New Jersey, to which they gave the name of German Valley, and where their descendants still reside. Their sons were among the officers and soldiers of the Revolution of the army of Washington. His grandfather was an officer in the war of 1812.

Born and reared on his father's farm, Judge Hager entered the College of New Jersey, at Princeton, from which he graduated in 1836, receiving in due course the degrees of Bachelor of Arts and Master of Arts. His alma mater since conferred upon him the honorary degree of Doctor of Laws. He studied law at Morristown, N. J., under the direction of Hon. J. W. Miller, United States senator from that state, being admitted to the bar in 1840, and commencing the practice at Morristown, He there remained until his emigration to California. He came to this State in the spring of 1849. He went after a few weeks' stay at San Francisco, to the mines, in what is now Nevada county. During the summer and fall of 1849, he was engaged in mining and merchandising on Bear river and Gold Run. In the fall of that year he made a trip with a six-mule team to Sacramento and San Francisco for supplies. During his visit to the latter city he concluded the State would be speedily settled by a large population, and he resolved to close his business in the mines and resume the practice of his profession in San Francisco.

He began law practice in that city in January, 1850, and soon had a profitable business, but he was not able to properly devote himself to it, on account of ever recurring attacks of rheumatism. He was walking on crutches one day in 1852, when a committee of citizens, on behalf of the Democratic party, waited on him and informed him that that party had nominated him for the State senate. He accepted, his associate being the late Elisha Cook. The city then had only two senators, the Whig nominees being John H. Baird, and A. Bartol. One candidate on each ticket was elected—Judge Hager and Captain Baird.

In the State senate Judge Hager very soon exhibited that stern sense of duty which ever marked his career as a public man. Not to dwell upon his record, it may be stated that in the session of 1853 he defeated the famous attempt to extend and grab the water front of San Francisco. The scheme was to extend the entire water front 600 feet, wholly in the interest of private parties. It was a colossal "job." It was defeated in the senate by a tie vote. Senator Samuel B. Smith, of Sutter, one of his companions in the mines, who was at first favorable to the measure, and who, before he understood it, had promised some of his friends to vote for it, after personal entreaty and explanation from Judge Hager decided not to vote at all, which left the senate equally divided.

In 1855 Judge Hager was elected on the Democratic ticket District Judge of the Fourth Judicial District for a full term of six years.

At the opening of banking hours on the morning of February 23, the doors of the great banking house of Adams & Co. were found closed. They were never to be thrown open again. The firm was composed of Alvin Adams, I. C. Woods, and D. H. Haskell. The first-named resided in New York city. Believing himself to be a special partner, he was yet a general partner under California laws. When the suspension was determined on (there was no overland telegraph then) friends of Adams in San Francisco, through counsel (Janes, Doyle, Barber & Boyd, and

Hackett & Casserly) immediately instituted suit in his name, in the District Court of the Fourth Judicial District, then presided over by the late Judge Delos Lake, against his partners, Woods & Haskell, to dissolve the partnership and to have a receiver appointed to administer the property and effects for the benefit of the creditors. Mr. A. A. Cohen was appointed receiver by Judge Lake, and gave a bond in the sum of one million dollars.

During the pendency of this suit, the company, by their firm name, made application to be discharged as insolvent debtors, and A. A. Cohen, Edward Jones and Major Richard Roman were appointed by Judge Lake as assignees, and the money, etc., in the hands of Cohen, receiver, was, by order, turned over to these assignees. The proceedings in insolvency were declared to be informal, and were dismissed. On the 8th of October, Judge Delos Lake having resigned, and being succeeded by Judge Hager, the latter appointed General H. M. Naglee to succeed Mr. Cohen as receiver, and made an order that the assignees in the proceedings in insolvency should pay the funds, etc., in their hands, to Receiver Naglee. This the assignees refused to do, and were adjudged guilty of contempt. Upon an appeal to the Supreme Court, this order was finally affirmed, and the money was then paid. Mr. Cohen had accounted for about $150,000 of coin, gold dust and bullion. General Naglee brought suit against him to recover the sum of $400,000 which, it was alleged, the first receiver had collected above the amount accounted for by him. The trial came off before Judge Hager and a jury in March, 1856.

The history of the failure of Adams & Co., and of events incident thereto, possesses the fascination of romance. The curious will find many smaller revelations in the local newspaper files of January, March and April, 1855, March and November, 1856, January and December, 1857, and in the California Supreme Court Reports, Volume 5, page 494, and Volume 6, pages 316 and 318.

The jury rendered a verdict against Mr. Cohen for $269,000.

The trial was one of the most exciting civil contests in our history, and aroused the passions of experienced counsel. Mr. Trenor W. Park and the late Edward Stanly argued the case for the plaintiff, and General E. D. Baker and Mr. S. M. Wilson for the defendant.

On the evening of the 17th of November, 1855, General William H. Richardson, the United States marshal, was shot and killed by Charles Cora on the sidewalk on the south side of Clay street, a few yards west of Leidesdorff. The parties had had a dispute at the Cosmopolitan late on the preceding night. The witnesses to the shooting were few and their evidence unsatisfactory. As to which party was the aggressor was left in doubt. Cora was a man of vicious surroundings, and as to the character and disposition of General Richardson, the testimony was in substantial conflict. Cora was tried for murder in Judge Hagar's court. It was on this occasion that Colonel Baker made, in the face of a storm of popular indignation, his most brilliant plea in defense of a prisoner's life. The defense was permitted by the prosecution to assail the character of the deceased, and its evidence on this point was opposed by counter testimony. Judge Hager's charge can be found in the local journals of January 18, 1856. It is worthy of mention that he took occasion to declare that the statute requiring Judges to deliver their charges in writing was, in his judgment, improvident, and perhaps unconstitutional.

It was no fault of the Judge that the jury did not agree. He kept them out two nights and one day, and only discharged them after a second urgent request in writing. They stood four for murder in the first degree, six for manslaughter, and two for acquittal. Cora was remanded to jail. Before he could be brought to trial a second time the great vigilance committee took him out of his cell from the custody of Sheriff David Scannell, and hanged him.

Judge Hager was elected as a Democrat, in 1865, to the State senate, at a special election, to fill a vacancy. His Republican opponent was William H. Sharp, the lawyer. Two years later, he was elected for a full senatorial term of four years. He served in the State senate during five sessions, and, during the greatest part of his service he was chairman of the judiciary committee, and all of the most important bills went into his hands. He voted against all subsidy bills, including the proposed San Francisco million-dollar donation to the Southern Pacific Railroad—on the ground that subsidies are wrong in principle, that the legislature has no right to tax the people to build railroads for private individuals.

In 1873, Judge Hager was elected United States Senator to fill the vacancy caused by the resignation of Hon. Eugene Casserly. At the same session Hon. Newton Booth was chosen for the long term to follow Judge Hager. There was unexampled confusion in politics at that time. Messrs. Booth and Hager were elected as anti-monopolists.

During the two sessions of the Forty-third Congress, while he was a member of the Senate, he largely engaged in the current debates, and his speeches on Chinese immigration, the currency question, the Louisiana case, involving the admission of Pinchback (colored) as a Senator, and various other topics, are fully reported in the *Congressional Record.*

Judge Hager became a regent of the State University, soon after its establishment, and continued such to his death.

Judge Hager married in October, 1872, at St. Louis, Missouri, the daughter of James H. Lucas, one of the most opulent citizens of that city, who was the capitalist of the banking house of Lucas, Turner & Co., for a long time doing business under the management of General Sherman in San Francisco.

When in 1882 the two great political parties wisely agreed, through their representatives assembled in conventions, that a new charter was needed for the government of the city and county of San Francisco, and that the body of freeholders to be selected to frame that instrument should be lifted above the atmosphere of partisan strife, having each designated seven men out of fifteen freeholders as members of the charter convention, they united, without one whisper of dissent, upon Judge Hager, as the fifteenth and crowning constituent of the body. He was elected and served as President.

Judge Hager's latest public trust was the office of collector of customs at San Francisco. To this he was appointed by President Cleveland in 1885. The appointment was a surprise to him, but he accepted and took charge of the custom-house on November 2, 1885. He served three and a half years, resigning immediately after the inauguration of President Cleveland's successor in March, 1889.

The Judge died at San Francisco, suddenly in bed, at night, about 4 A. M., March 19, 1890.

JOSEPH W. WINANS.

Joseph W. Winans, it has always been generally agreed, was the first scholar of the bar of this State. All through his life he was writing poems, editorials, addresses, etc., and it would seem that no man, properly devoted to the law could afford to give one-half so much thought to that character of work. However, the profession always accepted him as distinctively a lawyer, true to his trust.

Early winning a leading place, he kept it through a long career. He manifested a lively interest in the selection of the judiciary, in the support of law libraries, law journals and bar associations; zealously labored to promote the efficiency and dignity of the bar, and, when one of his brethren passed over the silent river, it was usually his hand that penned the memorial, which was spread upon the minutes of our courts.

Mr. Winans was born in New York city, July 18, 1820. He was of English-German extraction, his ancestors coming to America more than a century before his own birth. The picturesque lake, Winandermere, in England, was named for one of his forefathers. His paternal grandfather was a soldier in the American Revolutionary army. His father was for forty years a prominent merchant in New York city. He retired from business with a large fortune, and at his death was over ninety years old.

Mr. Winans entered Columbia college at the age of sixteen, having passed through a grammar school. He graduated from college at the age of twenty. After three years' study, he received his certificate as an attorney-at-law.

The ranks of the profession were divided then into two distinct grades, attorneys and counsellors. After practicing three years as an attorney, Mr. Winans received his license as a counsellor-at-law, signed by Justice Bronson. The next year (1847) the people of New York adopted a new State constitution, in which the distinction between the grades of attorney and counsellor were abolished. After continuing practice for three years longer, he and a few other young men bought and equipped the bark Strafford, in which they sailed from New York, February 6, 1849, and arrived at San Francisco, by way of Cape Horn, August 30, 1849. Resting here only a few days, they proceeded in their little craft to Sacramento.

There Mr. Winans formed a law partnership with John G. Hyer, which continued to

the great flood of the winter of 1861-62, when Mr. Winans removed to San Francisco.

Shortly after commencing practice, the firm of Winans & Hyer found litigation rife—land contests and disputed squatter titles. For a time squatter sovereignty held sway, and lawyers and sheriffs were kept busy in settling those so-called "settlers." Again, the machinery of the courts was to be put into operation; local government to be established; streets, lots, squares and cemeteries to be laid out; police and fire departments to be set in immediate motion. Mr. Winans' firm hand was seen in all these movements.

We recall a visit which we made in boyhood to the District Court in Sacramento, at the beginning of a term of court—always the dryest day of the term—when the term calendar was called, and the firm of Winans & Hyer appeared on one side or the other in over forty-two cases; more than double the number credited to any other firm. On his removal to San Francisco, Mr. Winans formed a partnership with Mr. David P. Belknap.

Mr. Winans held many offices of honor and trust without emolument.

In 1850, within a year after his arrival there, he was the Whig candidate for Criminal Judge, then called Recorder—of Sacramento city, but was defeated by B. F. Washington, the Democratic nominee. From 1852 to 1854, Mr. Winans was city attorney of Sacramento.

In 1858, he was chosen president of the Sacramento Library Association.

Between the two years last named he served three terms as president of the Pioneer Society of Sacramento.

In 1859, he attended the general convention of the Protestant Episcopal Church, which met in Richmond, Virginia, and took a prominent part in the debates. He had been one of the organizers of the Episcopal Church Society in Sacramento, and was a vestryman there, as afterwards in San Francisco.

In 1851 he was elected by the legislature one of the trustees of the State library, and was chosen by his associate trustees president of the board. He held that position some ten years.

In 1864 he was elected president of the San Francisco Society of California Pioneers, and in 1865 was president of the San Francisco board of education.

He was one of the founders of the San Francisco Law Library, and, on its organization in 1865, became one of its trustees, and continued in that position to his death.

He also aided to organize the San Francisco Bar Association, of which he was a trustee from its formation until 1879. He was a regent of the University of California for many years.

He was president of the Society for the Prevention of Cruelty to Animals, and of the Society for the Prevention of Cruelty to Children.

He was elected on the citizens' ticket to the State constitutional convention, which met in Sacramento in September, 1878. He was a hard-working member of that body, but, like the large majority of the leading lawyers of his side of the house, he strongly opposed the ratification of that instrument.

It was Mr. Winans' melancholy duty to write the epitaphs of many distinguished Judges and lawyers of California. From his pen were the bar memorials of Judge Hugh C. Murray, who became a Supreme Justice at the age of twenty-nine, and died on the bench at thirty-two; of Hon. Edward Norton, who had served a term as Supreme Judge; of the Hon. Edward Stanly, who had been Governor of North Carolina; of John B. Felton, who died lamented by the entire bar, in June, 1877; of Judge James H. Hardy, who had been his competitor in the famous Archy case, who died in 1873; William H. Patterson, for many years prominent in San Francisco, and who, after a long disability, died in 1881; and several others. He also wrote the resolutions adopted by the Pioneers, in respect to the memory of Charles D. Carter, an old business man, who had been a mechanic, an editor, an alderman, and who, at his death, in June, 1871, was president of the Pioneers. He also delivered a brief address in the Fourth District Court eulogistic of Judge Joseph G. Baldwin, once Judge of our Supreme Court, who died on October 1, 1864. His memorial of Felton was, perhaps, the best of all—unless his paper read to the Pioneers, on the death of President Garfield, be excepted.

In verse—didactic, erotic, lyric, pastoral, etc.—Mr. Winans was fruitful. His last and longest poem, entitled "A Centennial Lyric—The Course of Empire," appeared December 31, 1876.

It should be stated with emphasis that, while Mr. Winans had a bright literary record, he always subordinated letters to law.

He never asked or received compensation for his literary work. He was a lawyer first, a literary man second. Actively and laboriously and continuously, since 1843, he worked steadfastly and devotedly beneath the banner of his profession. He had a quick and acute perception, a watchfulness that took nothing for granted, an energy and enthusiasm that tell. Milton S. Latham, after his brilliant life at the bar and politics, and when he had become a banker, was a client of Mr. Winans. Latham said to Winans one day, after leaving court, (and they had known each other since 1850): "I would employ you in a lawsuit above all other men I know, because if you have to 'come down,' you will scratch the bark in coming down."

After his removal to San Francisco he conducted to successful issue many of the most important cases that were tried.

A fine belles-lettres scholar, full and finished, well grounded in all classics, and a devourer of all that class of books which, to quote Bacon, are worthy to be "chewed and digested," Mr. Winans' private library in his home mansion was indeed "a study." It contained 5000 volumes—rare, ancient, and modern—embracing works on art, science, history, logic, philosophy, etc., etc., and all the poets. In this studio he spent his leisure hours with the genius, wit and learning of the past, accumulating stores of instruction for the profit of the public in the lecture hall, as well as for the guests at his fireside. In glancing over the list of subjects that engaged his thought and exercised his pen, one is astonished at their vast variety, as well as charmed by the manner of their treatment.

He was passionately fond of fine paintings. Possessing an æsthetic taste, he was a devout worshiper at the shrines of Raphael and Horace Vernet, and Trumbull and Sully, whose masterpieces beautified his drawing-rooms.

His only daughter, Lilie, inherited his love of art, and is an enthusiastic student at the easel.

Mr. Winans married at Sacramento, in 1854, Miss Sara A., second daughter of Alexander Badlam, Sr., and sister of Hon. Alexander Badlam, Jr., who was afterwards city and county assessor of San Francisco. He lost one son, aged nineteen years, in 1880. His only other son, Joseph W. Winans, Jr., who was admitted to the bar in 18[illegible], died about ten years after his father.

Mr. Winans died at San Francisco, March 31, 1887.

THE FIRST GOVERNOR.

Peter H. Burnett, the first Governor of California, was a lawyer, and a pioneer of pioneers. His long life ended forty-five years after he left the executive chair.

Governor Burnett was a native of Tennessee. His father was a farmer and carpenter. The name for generations had been Burnet; the Governor was the first of the family to add a "t," and all his brothers followed suit. His motive was to make the name more complete and emphatic.

His early manhood was spent in Missouri, chiefly in mercantile pursuits, in which he failed, and which involved him in large indebtedness. That he might be able to cancel his obligations and restore his wife to health, he looked to the new Northwest as far back as 1843, in which year he took his wife and six children in ox teams to Oregon, when the right to that territory was disputed by the United States and Great Britain. He lived in Oregon five years, aided in establishing the provisional government, and cultivated land. He came to California in 1848, and after working in the northern mines for a few weeks, settled at Sacramento, and entered on law practice. He had been admitted to the bar in Tennessee. He became soon after his arrival the lawyer and agent of General John A. Sutter, the great landlord of Central California, and found the employment very profitable. Removing to San Francisco, where his family rejoined him, he opened a law office. His profession, his manners, his business judgment and habits of life made him speedily and favorably known. In the first gubernatorial campaign, the candidates were not nominated by regular conventions, but were put forward by public meetings. Colonel J. D. Stevenson called a Democratic meeting on Portsmouth Square, and upon his nomination, Peter H. Burnett was declared the Democratic nominee for Governor. Other meetings nominated John W. Geary (Democrat), W. S. Sherwood (Whig), John A. Sutter and W. M. Steuart (independents). The people gave Burnett 6716 votes, Sherwood 3188, Sutter 2201, Geary 1475, Steuart 619. Governor Burnett was inaugurated in December, 1849. Public life proved distasteful to him, and he resigned in January, 1851, when the legislature was sitting at San Jose. He then resumed law practice in partnership with William T. Wallace and C. T. Ryland, who were destined to be his sons-in-

law and distinguished in the history of the State. In 1852 he paid to his old business partners in Missouri the last dollar of his debts, which had aggregated $28,740.

He gave up law practice in 1854 and entered on a wide course of reading. He made his first sea voyage in 1856, visiting New York city in company with his son-in-law, Mr. Ryland. He afterwards made two other visits to the East by sea. His last two public speeches were made in opposition to the great vigilance committee in 1856. In 1857 he was appointed a Supreme Judge by Governor Johnson, and filled out an unexpired part of a term, nearly two years. In 1863 he, with others, founded the Pacific bank. For many years he was president, and then resigned.

He published a book of the recollections of his life. In it this rule is laid down for the guidance of bankers and all business men: "If a man *once* goes through insolvency or bankruptcy, or compromises with his creditors, or indulges in unreasonable expenses, he is unworthy of credit." He says the exceptions to this rule are about one in ten. He thinks, also, (in this book) that in banking the temptation to do wrong is less than in almost any other secular pursuit.

Governor Burnett died at San Francisco while in sleep, in the day-time, on the 17th of May, 1895. His age was eighty-seven years and six months. He left a valuable estate and many descendants. The San Francisco lawyer, John M. Burnett, Mrs. Judge William T. Wallace, and Mrs. C. T. Ryland, of San Jose, are his children.

EDMUND RANDOLPH.

Edmund Randolph was the scion of a long, puissant line of men, commencing with the pioneers of American freedom. He left an antique home flooded with Revolutionary glories, and came to the remotest dominion of the republic, himself a pioneer in the work of founding a free empire upon virgin soil. Bringing with him the stimulus of a high ambition and the heritage of ancestral fame, he approved himself the heir of moral excellence and of great intellectual power.

He was born in Richmond, Virginia, in the year 1819. He attended the ancient and celebrated college of William and Mary in that State, one of his fellow-students being the Hon. Archibald C. Peachy, who came to be for many years a prominent and wealthy lawyer of San Francisco, and who died in June, 1883. As Randolph sat at his desk in that historic institution of learning, his eyes daily fell upon one of the noblest triumphs of the sculptor's art, a tablet of carved marble erected in memory of his remote ancestor, Sir John Randolph. Sir John came from England to Virginia early in the last century. His first son, John, was the great-grandfather of the California lawyer. His second son, Peyton Randolph (born in Virginia, 1723, died in Philadelphia, 1775,) was twice president of the Continental Congress. Sir John's grandson, Edmund, grandfather of our present subject (born 1753, died 1813), was Governor of Virginia, attorney-general of the United States under Washington, and succeeded Jefferson as Secretary of State. A fine portrait of him still may be seen in the attorney-general's office at Washington.

Between the first Edmund Randolph and his grandson of the same name came Peyton Randolph, named after the patriot before mentioned. This second Peyton Randolph was also a lawyer of distinction. He married Maria Ward, the only girl whom the eccentric John Randolph of Roanoke, ever loved—according to his own confession. (It may be stated here that the families of Sir John Randolph and John Randolph of Roanoke, were not related.) Maria Ward was a noted belle, perhaps the most beautiful and accomplished American woman of her day. Lewis and Clark, in their exploration of the great unknown West in 1803-4, named a river "Maria," after this maiden. Maria Ward was the mother of Edmund Randolph, our subject.

Upon graduating from William and Mary college, Edmund Randolph attended the University of Virginia for one year, chiefly as a student of law. Then removing to New Orleans, he obtained, by appointment, the office of clerk of the United States Circuit Court for the circuit of Louisiana. Pursuing his legal studies, he was, after a few years, admitted to practice, and followed the profession in the Crescent City until 1849. He married in that city the daughter of a leading physician, Dr. Meaux, a lady whom he had met in Virginia some years before. He arrived in California in 1849. A few weeks later he was elected to represent San Francisco in the lower branch of the legislature—at the first session of that body, which opened at San Jose, December 15, 1849. This body met to organize a State government. It was known as the "Legislature of a Thousand Drinks." This title

was not given it on account of the intemperate habits of the members, as popularly supposed, but owing to the words invariably uttered by Senator Green of Sacramento when inviting friends to his sideboard: "Walk in, gentlemen, and take a thousand drinks."

In one of the museums of London may be seen crayon sketches, by an English artist, of all the members of the legislature at this session. Every man had a "flop" hat and a "hickory shirt. Mr. Randolph was a leader of the lower house throughout the session. State officers and United States Senators having been chosen, he was appointed, with John Bigler, to wait upon the provisional Governor, General Riley, and inform him of the organization of the State government. The committee requested General Riley to turn over to the State treasurer the "civil fund," aggregating $1,300,000, collected by the United States army and navy officers, without legal authority, since the acquisition of the country. General Riley refused to do this, but turned the fund into the Federal treasury, although he had paid therefrom the expenses of the State constitutional convention. The legislature was accordingly compelled to borrow money, issuing bonds bearing three per cent per month interest.

The greatest cause in which Mr. Randolph was ever engaged was the most important civil action ever tried in California. It was a contest between the United States government and the assigns of Andreas Castillero, and involved the title to the great Almaden quicksilver mine, in Santa Clara county, together with two square leagues of land adjoining the mine. The whole property in dispute aggregated in value several million dollars. Mr. Randolph was introduced to the case by his life-long friend, A. P. Crittenden, who was attorney for the "Fosset" claim to the mine, those representing the Fosset claim, of course, desiring to see the government triumph over Castillero.

The history of the discovery of this remarkable mine and the twenty years' litigation which followed it, would make a volume in itself. It is full of interest. The mine was discovered by Andreas Castillero, a wealthy Mexican, in the year 1845, when California was a Mexican territory. After the acquisition of this country by the United States, Congress having established in San Francisco a land commission to settle the private land claims in California, a petition was filed by Castillero with this commission, September 30, 1852, asking that his claim to the New Almaden mine, and two square leagues of adjoining land, be confirmed to him. Halleck, Peachy and Billings were petitioner's attorneys. The claim was opposed by the United States through the United States land agent. The land commission confirmed Castillero's title to the mine, but denied him the land. On appeal to the United States District Court, a great legal battle ensued. Both parties were appellants and both respondents, neither being satisfied with the decision of the land commission. On behalf of Castillero, appeared Reverdy Johnson, Judah P. Benjamin and Archibald C. Peachy; on the part of the government, Edwin M. Stanton and Edmund Randolph. The full proceedings of this trial were printed by order of the government. They comprise five large octavo volumes. Mr. Randolph's closing argument for the government covers three hundred printed octavo pages.

It will be borne in mind that Castillero claimed the mine, and two square leagues of land; the land commission confirmed to him the mine, without the land. To the outsider who knows nothing about the equities of this case, this might seem to be a fair compromise. But it satisfied neither party. The government was not willing to take the land and surrender the mine, and Castillero was not satisfied to take the mine and give up the land. The decision of the United States District Court was affirmatory of that of the land commission—the mine to Castillero, but not the two square leagues of land.

The case was taken to the Supreme Court of the United States, and that tribunal decreed that Castillero was not entitled to either the mine or the lands. But before it was argued in that august tribunal, Randolph died. He had received a fee of $5000, and expected a large sum in addition. The United States being his clients and the property at stake being of such immense value, he felt that his services, covering some four years' time, would receive princely remuneration. However, the $5000 paid him as a retainer, was all that he received. After his death his widow presented a claim to Congress for $75,000. A petition accompanied the claim, signed by fifty leading lawyers of San Francisco, setting forth that Mr. Randolph's life was sacrificed in this case, and that considering the magnitude of the interests involved and the length of the controversy, the sum asked by his widow was reasonable. On

final settlement, the government paid Mrs. Randolph $12,000, making $17,000 paid for Mr. Randolph's services. The government paid Mr. Randolph's coadjutor, Edwin M. Stanton, $25,000, although the whole burden of the case was upon Mr. Randolph.

The counsel on the opposing side, Reverdy Johnson and Judah P. Benjamin, received $35,000 each, this fact being disclosed in a letter from Mr. Johnson to Hon. T. J. Durant, of Washington. In that letter Mr. Johnson stated that the great labor of collecting the evidence for the government in the New Almaden case devolved wholly upon Mr. Randolph; that the latter argued the case at great length and with great ability; and prepared an elaborate brief, which, after his death, was used on appeal in the United States Supreme Court. Mr. Johnson added that he would not perform the services rendered by Mr. Randolph for less than $25,000.

Randolph had little wit, but fullness of sarcasm. He never told a "joke." At college, whenever, "one of the boys" would say a good thing, Randolph would ask, seriously, "What does that prove?" He once said a good thing himself, however, about a certain Judge, on the bench, noted for his fluency of speech. This Judge was delivering an opinion, and Randolph was impatiently waiting to commence the trial of a cause. The Judge rolled out sentence after sentence, and period after period, with magnificent volubility, and it seemed that the end would never come. In the midst of this judicial display, Randolph turned to Tully R. Wise, and inquired sotto voce, "Did it ever occur to you what a great man Judge —— would make, if he only stuttered?"

But Randolph, it must be said, had a one-sided mind. He never took in the whole situation. Looking at him in the New Almaden case, the most prominent fact is his tireless industry. Coming from the South, and being impetuous in temperament, it is a marvel that he could bestow upon any cause the patience, industry and labor which he gave to that case. He was a genius, but he was not a legal genius. He was not a powerful reasoner. He was not logical. We cherish his fame, but we are speaking the conclusion of the bar leaders who knew him best. He was full of poetry and enthusiasm, yet at the same time, strange to say, he was a hard-working man. He won public admiration, yet he had few intimate friends. He was not companionable. In his family, however, he was almost worshiped.

He was a man of splendid visions. He took a deep interest and an active part in General Walker's scheme for the conquest of Nicaragua. Walker was a born leader of men, but he succumbed fully to Randolph's influence. Randolph, like Bishop Whitefield, sincerely believed that no Southern country could be developed without slave labor. He hoped to see a central empire established between the Western continents, of which Walker would be the executive head, and he (Randolph) the great chancellor. His dream came nearer fulfillment than is generally supposed. The United States did not interfere with Walker's operations, and there is hardly room to doubt that with Vanderbilt's aid the great filibuster would have won an honorable name in history. Vanderbilt had a magnificent grant from the Nicaraguan government, giving him the exclusive right to transport passengers and freight across the isthmus, and also entitling him to a large land grant on both sides of the great highway. This splendid franchise Walker, in an evil hour for himself, wrested from Vanderbilt and conferred upon the Morgans of New York city.

When Walker's last stronghold was taken, it was found that the besieging force was composed principally of white sailors! They were in the pay of Vanderbilt!

Randolph delivered to the Society of California Pioneers, September 10, 1860, the ablest historic address ever uttered on this coast. In it he referred to the fate of his friend Walker, and also to the end of Henry A. Crabbe, who led a filibustering party into Mexico.

Randolph died at San Francisco, September 8, 1861, aged forty-two years.

S. C. HASTINGS.

The first Chief Justice of the Supreme Court of California, and the founder of Hastings College of the Law, was born in Jefferson county, New York, November 22, 1814. His father, Robert C. Hastings, had removed from Boston to New York, and there married Miss Patience Brayton, whose family had been among the earliest settlers of that region. There were seven children of this marriage, all of whom attained majority.

The elder Hastings died on a farm near Geneva, New York, when his son was ten years old. The family then removed to St. Lawrence county. There this son attended the Gouverneur Academy for six years, being under the

special instruction of two tutors—graduates from Hamilton college. At the age of twenty, he was tendered and accepted the position of principal of Norwich academy in Chenango county, New York. This institution had gone into a sort of decline, but was inspired with new life under the administration of its young principal, who introduced the Hamiltonian system of instruction, and the Angletean system of mathematics, and other branches of education. At the end of one year he resigned and went to Lawrenceburg, Indiana. There he pursued the study of law, first in the office of Daniel S. Mayor, afterwards in that of Hon. Amos Lane. He had, before removing from Norwich, read law for a few months in the office of Charles Thorpe, Esq., of that town. In the exciting presidential campaign of 1836, he was editor of the *Indiana Signal*, and in that capacity gave a cordial support to Martin Van Buren. In December, 1836, he was admitted to the bar by the Circuit Court at Terre Haute, Indiana.

In January, 1837, he removed to Burlington, in what is now the State of Iowa. He soon located at a little hamlet, which has grown into the city of Muscatine. All that vast region was then under the jurisdiction of the courts of the Territory of Wisconsin. Having after another examination, been again admitted to the bar, Mr. Hastings commenced practice. He was soon appointed a justice of the peace by Governor Dodge, of Wisconsin territory. He used to say that his jurisdiction covered the whole Western territory, extending even to the Pacific ocean. He was a man of large stature, capable of great physical endurance, shrewd, energetic, alert in mind and body, simple in his tastes and habits, peculiarly adapted to the border, and was not to be found wanting in the ebb and flow of frontier life. When Iowa was admitted as a State, he was, probably, the best-known and most popular of her citizens.

When the territory of Iowa was created in 1838, Mr. Hastings was elected, as a Democrat, a member of the lower branch of the legislature. He continued to represent his county, in either the House or Council, at every session of the legislature until the admission of Iowa as a State, in 1846. At one session, he was President of the Council. He was usually a member of the judiciary committee, and as such did effective service in the shaping of important legislation. He reported from that committee the statute which was afterwards, for many years in Iowa and Oregon, known as "The Blue Book."

In 1846, upon the admission of Iowa into the Union, Major Hastings took his seat as her first representative in the lower house of Congress. This was the Twenty-ninth, or Mexican War, Congress. At the end of his congressional term, he was appointed by the Governor Chief Justice of the Supreme Court of Iowa. This position he occupied only one year. The year 1849 had arrived.

Judge Hastings came to California in the spring of that year. He settled at Benicia. About six months after his arrival he was chosen by our legislature (December 20, 1849) Chief Justice of the Supreme Court, his associates being Henry A. Lyons and Nathaniel Bennett, both of whom are deceased. He was glad to accept this honor, as it would make him widely known in the new State, and the salary was greater than that which he had surrendered in Iowa. His term was two years, which he served out.

Judge Hastings stepped from the Supreme bench into the office of attorney-general, to which the people elected him in the fall of 1851. He made no speeches in the campaign, but his Whig opponent, who was quite an orator, canvassed the State. The salary of a Supreme Judge at that day ($10,000 per annum) proved to be a poor support for a professional man with a large family. While on the bench, of course, Judge Hastings was debarred from practice, and at the end of his term he was in very straitened circumstances. As attorney-general, he was enabled to conduct some law business on his own account. He soon entered upon a career of prosperity and the attainment of wealth.

The foundation, the nucleus of Judge Hastings' colossal fortune was the money which he received in the shape of law fees while attorney-general. He held this office two years, and then continued law practice. He also became a member of the Sacramento banking firm of Henley, Hastings & Co. This firm failed, but Judge Hastings himself was not much hurt by it. About this time he began to get remittances from Iowa, from the sale of his lands.

Although he was to become lord of a large landed estate, quite a long time elapsed, after his arrival here, before he invested in real property. He loaned his money on undoubted security at three to five per cent per month interest. After leaving the office of attorney-

general, he followed his profession a year or two, meanwhile keeping large sums of money out on loan, then gave up professional life for good. He now turned his attention to city lots and country lands, gradually acquiring about one hundred pieces of real estate in San Francisco, and bought large tracts in Solano, Napa, Lake and Sacramento counties. In 1862, he was worth $900,000, which he owed chiefly to appreciation in real estate. Twenty years later he was worth two and a half millions of dollars. The San Francisco property, standing in his name down to December, 1887, was valued at $150,000, he having, about ten years before, conveyed to his son, C. F. D. Hastings, in trust for all his children, city realty of the assessed value of half a million. Besides making other munificent provisions for his children, he presented to his two eldest sons an extensive and fully stocked farm in Solano county. In Napa county he reserved three large estates, enriched with vineyards, prolific in their yield of the choicest grapes. In other counties he turned his attention to the growing of wheat and wool on a large scale.

Judge Hastings was married to Miss Azalea Brodt, at Muscatine, Iowa, in 1845. She, with her children, joined her husband at Benicia in 1851. At that town the family home was located for many years. Mrs. Hastings died at Pau, in the south of France, in 1876. There were eight children of the marriage—Marshall C. F. D., Robert P., Douglass, Clara L., Flora A., Ella and Lellia.

In founding the college of law, which bears his name, Judge Hastings secured his fame for many coming generations, as a friend of learning, and did an act which will ever inspire his children and his children's children with honorable pride. For the establishment of this institution, the only law college in the State, he paid into the State treasury, in 1878, the sum of $100,000. He made it a condition that no more than the amount of interest which would accrue from that sum at seven per cent per annum, should be expended for compensation to instructors. Also, that the privileges and benefits of the college should not be confined to such students as intended to follow the legal profession, but should be freely extended to all. He declared his conviction that the study of law by the students generally in all our institutions of learning, would greatly contribute to the security of free government and to the advancement and elevation of the people.

In order to formally accept the donation and to carry out the views of the donor, the legislature of 1878 passed an act creating the college. By that act the officers were declared to be a Dean, Register and eight Directors—the Directors being named as Joseph P. Hoge, W. W. Cope, Delos Lake, Samuel M. Wilson, O. P. Evans, Thos. B. Bishop, John R. Sharpstein and Thomas I. Bergin. The Dean and Register were to be appointed by the Directors. The act provided further that the college should affiliate with the University of the State, and be the law department thereof; that the sum of seven per cent per annum upon one hundred thousand dollars should be paid by the State, in two semi-annual payments, to the Directors of the College, and that any person might establish a professorship in his own name, by paying to the Directors thirty thousand dollars.

The Directors very appropriately asked Judge Hastings to take the position of Dean, and he complied. After some years he relinquished the post, and his son, Robert P., was made his successor therein, the Judge taking the Professorship of Comparative Jurisprudence. Thirty dollars is the limit of expense to the student—$10 for each year, or for admission to each class. This college, although technically a part of the State University, is wholly located at San Francisco. Its students are accorded the privileges of the San Francisco Law Library, and many of them pass their hours of study in the hall of that institution. The act of the legislature, before referred to, declares that students who receive diplomas from the law college shall be entitled to practice in all the courts of the State, subject to the right of the Chief Justice of the Supreme Court to order an examination, as in other cases.

Judge Hastings died at San Francisco on the 18th of February, 1893, aged seventy-eight years.

PETER VAN CLIEF.

Judge Peter Van Clief was born in Ohio, on the 26th of January, 1818. He was admitted to the bar in Ohio, and practiced law in that state for several years. He came to California in 1849, across the plains, and after having engaged in mining for a time, located at Downieville, engaging in law practice. In 1851 he became, by appointment of Governor Weller,

also a native of Ohio, judge of the Seventeenth Judicial District. After leaving the bench, he practiced law in Downieville for some time, and afterwards engaged in the practice in Marysville, from 1870 to 1877, and then removed to San Francisco. He afterward alternated between San Francisco and Downieville. In 1889 he was appointed Supreme Court commissioner, and held that office until his death on November 29, 1896. He was twice married, and left a widow, Mrs. H. A. Van Clief, and three daughters, Mrs. H. L. Gear and Mrs. W. F. Herrin, of San Francisco, and Mrs. Helena C. Cowden, of San Jose.

A press writer, in noticing the end of this long and worthy life, said very well that he was universally and justly esteemed for his legal attainments, and that he was otherwise a man of deep culture, having contributed ably and frequently in the field of general literature. In everything which he said or wrote he was so rigidly upright that he came to be spoken of by some people as a man of impracticable honesty.

His friend, Judge John Currey, who was Chief Justice of our Supreme Court, when he first met Judge Van Clief, said, when he learned of the latter's death, "He argued a number of cases, and I saw that he was a lawyer of rare ability. I came to know him well, and saw much of him for a good many years. In the preparation and trial of cases he manifested the ability and confidence of the thoroughly equipped lawyer. In a case in which I was engaged on the other side, and he and the late Judge H. O. Beatty (father of our Chief Justice), were on the other, I became more thoroughly impressed than ever with his familiarity with the law, and his freedom from all undue maneuvering for temporary and useless advantages.

"He was a very plain and direct man," continued Judge Currey, "in all his intercourse wth men. He never, so far as I know, manifested anything like vanitv. He hated all sham. He was a thoroughly honest man—honest with himself and all others. Advanced as he became in years, I greatly regret his departure from among us. I feel his loss with a mournful sense that a good man, whose influence was always beneficent, is gone forever from the legal profession."

Like high testimony was given by Supreme Judge McFarland and ex-Supreme Judge Searles and others.

SOLOMON HEYDENFELT.

The features we are now to see testify to serious problems solved by untiring effort, but they show lines of tenderness and sympathy that held their place beside the imprint of absorbing thought. They speak, too, of reputation won, not in forensic encounter but in council. "Cautious, silent and laborious," as Macaulay pictured Godolphin, here is a mind that kept tranquil amid the severest employments reaching through a long flight of time. Here is one whose lifework was nearly all done apart from public observation. However, it must not be understood that this prime character has lived and labored as a recluse. Some open views even of him are to be had.

Solomon Heydenfeldt was born at Charleston, South Carolina, in 1816. When he was eight years old his father died, having been a teacher of ancient languages, and having been completely stripped of a considerable estate during his absence from home, by the defalcation of an agent who held his power of attorney. Being fortunately reared with maternal care, Solomon Heydenfeldt was sent to a college in Pennsylvania, where he studied Latin and Greek and mathematics; but he left college without graduating. Returning to Charleston, he studied law in the office of the eminent advocate, De Saussure, son of the great chancellor of the Palmetto State. In the year 1837, at the age of twenty-one, he removed to Alabama, first stopping at Montgomery, where he was admitted to the bar. He soon afterwards settled in Russell county, near the Georgia line, and practiced law in both Georgia and Alabama. In this region he married, and passed thirteen years of his life in active and successful law practice. He removed to California in the spring of 1850, settling at San Francisco. His excellent habits and business assiduity, his generous disposition, broad legal knowledge and dignified presence quickly made him a man of mark in that era of reckless activity. He acquired a fine practice in civil business.

The only criminal case he ever had in his life was tried in the fall of 1851, and presents a ludicrous instance of a jury's sense of propriety. Samuel Gallagher had killed Lewis Pollock on the night of June 22, 1851. Gallagher was tried for murder in the Fourth District Court, Delos Lake presiding, August 12, 1851. When the jury had been out for three hours, the bailiff entered Judge Heydenfeldt's office and informed him that he was directed

by the jury to state to him (Heydenfeldt) that they stood, firmly, seven for conviction of murder in the first degree and five for acquittal, but that if it pleased him (Heydenfeldt), they would agree upon a verdict of manslaughter. Judge Heydenfeldt was agreeable, and Judge Lake was sent for, and a verdict of manslaughter was brought in. The prisoner was sentenced to three years' imprisonment, and was fined $500. Fining prisoners in capital cases, in addition to imprisonment, was quite the fashion here in early days. The law and the courts never got so far advanced, however, as to fine a man and hang him, too.

After the sentence of Gallagher, Judge Heydenfeldt told his friends generally of the communication between himself and the jury. Judge Lake did not learn of it until the sentence had been imposed, or, it is safe to say, there would have been a signal exhibition of judicial wrath.

The legislature which met at San Jose, in January, 1851—the first session after the admission of California into the Union—was nearly evenly divided between Democrats and Whigs. On joint ballot the Democrats had a slight supremacy. When the two houses met in convention to ballot for a United States Senator to succeed John C. Fremont, Solomon Heydenfeldt was the Democratic caucus candidate, and T. Butler King, then collector of the port of San Francisco, was the Whig nominee. Fremont, it may be explained, had been elected for the short term by the legislature which met previous to the admission of the State, on the happening of which event (September 9, 1850) he took his seat in the United States Senate, to serve until the following March. In January, 1851, in the contest now to be noticed, he was a candidate for the succession, and received seven votes, his supporters being native Californians (not Native Sons of the Golden West, so-called, but of Spanish and Mexican extraction). Judge Heydenfeldt, being Southern in his politics, three of four Northern Democrats, all of whom had participated in the Democratic caucus, "bolted" the caucus nomination, refusing persistently to vote for him. They voted for John W. Geary, who was afterward Governor of Pennsylvania. The legislature took no less than one hundred and forty-two ballots without an election. There was danger during the protracted struggle that Fremont's native sons would vote for King, and end the fight, in which event the Democratic bolters would not have accomplished anything of extra value, inasmuch as King was himself a proud Southron. That legislative session closed without an election of Senator. At the next session John B. Weller was chosen. But for this unexpected miscarriage, Judge Heydenfeldt would have entered the Senate in his thirty-fifth year.

It was the general belief among Democrats, after the legislature adjourned, in 1851, that Judge Heydenfeldt would be the party candidate for United States Senator at the next session, one year later. But before that session opened he was nominated by the State convention of his party for Judge of the Supreme Court.

Judge Heydenfeldt was elected in the fall of 1851 a Justice of the Supreme Court, his Whig opponent being Hon. Tod Robinson, father of the well-known lawyer, Cornelius P. Robinson. Judge Robinson had been Judge of the Sixth judicial district at Sacramento. He was a North Carolinian, and a lawyer of fine ability. This was the first election for Supreme Judges under the State government, the first Justices of the Supreme Court having been chosen by the legislature previous to the admission of the State. Judge Heydenfeldt succeeded Judge S. C. Hastings, and his term was for six years, commencing January 1, 1852.

On January 6, 1857, having served five years on the bench, only one year of his term remaining, Judge Heydenfeldt resigned. His opinions are contained in Volumes II to VII, inclusive, of the Reports. He left the bench because the salary did not enable him to support himself and family and other dependent relatives. Resuming practice in San Francisco, he followed it with activity and success until the Test Oath Act was passed by the legislature, which required all lawyers as a condition precedent to the right of practice in the courts in civil cases, to take and subscribe a strongly worded oath of loyalty. A few Southern lawyers, among them Judge Heydenfeldt, Gregory Yale, and E. J. Pringle, could not conscientiously subscribe to this, and accordingly withdrew from the courts. The act was repealed several years later, but by that time Judge Heydenfeldt had obtained a lucrative office business as advisory counsel to many large firms, capitalists, and corporations, and he adhered to that department of the profession. He tried a few large mining cases in the District Court of Storey county, Nevada,

at a time when a test oath act, similar to the California statute, was in operation in that State, but he was not required to take the oath, the act being treated as a dead letter.

The Judge accumulated a large fortune, but his expenses and charities were a constant and serious drain upon it. To the yellow fever fund, in the seventies, he made a princely contribution, and had it credited to "cash."

In person he was diminutive, with small hands and feet, dark hair and complexion, a kind eye, well-shaped head and finely chiseled features. His weight was suited to his stature, he was well preserved, and possessed distinguished dignity of manner. A man universally esteemed, he yet held himself aloof from the people. He was not a man of the masses. We once heard him on the stump addressing a multitude of the unterrified. He was out of place. He disliked all gloss, and glitter, and tinsel and was void of arrogance and affectation. He knew sorrow, bore the burden of care, and was thrown amid all the snares of pioneer adventure, yet he kept the mood and habit of the philosopher.

Judge Heydenfeldt died at San Francisco on the 15th of September, 1890.

In the Supreme Court, sitting at San Jose, in 1853, Solomon A. Sharp, of San Francisco, in the midst of an argument, was given to understand by Judge Heydenfeldt that the court did not agree with him. He continued his argument in spite of admonitions from the bench, until finally told in plain terms that the court was confirmed in its opinion, when he ceased to struggle, remarking, "Well, it's an honest difference of opinion." "Yes," said Judge Heydenfeldt, in his polite and quiet way, "but it's a very material one."

TOD ROBINSON.

The ancestors of this gentleman were, on his father's side English, on his mother's Scotch-Irish. They emigrated to North Carolina at so early a day that all tradition of the event is lost. His father was a merchant and planter in that State. At a time when it was a life office, he held the position of clerk of the County Court for Anson county. In this county, Tod Robinson was born, A. D. 1812. When he was quite young, his father resigned his office and removed with his family to Alabama.

Tod Robinson came to California from Texas, by way of Panama, in September, 1850. He landed at San Francisco, but not tarrying there, pushed on up the Sacramento river to Sacramento city, then the liveliest and busiest mining camp in the State. Here he settled, and entered immediately on the practice of law. He very soon attained prominence and success. He had not been in the city a year when Judge Thomas resigned his position as District Judge of the Sixth judicial district, embracing Sacramento county, and Governor Burnett appointed Mr. Robinson to fill the vacancy. For this honorable and responsible position his extensive legal attainments and his incorruptible integrity eminently fitted him. During the short period of his occupancy of this office, Judge Robinson won the undivided esteem of the people of his district. In the list of able jurists who graced the bench of the Sixth judicial district, Judge Robinson's name shines with unfading lustre. He had occupied the position only a few months, when, in October, 1851, the Whig party, to the principles of which he was devotedly attached, unsolicited, nominated him as their candidate for Supreme Judge, whereupon he resigned his place on the district bench, and accepted the nomination for the higher office. The Whig party being in a minority, he was defeated. The election over, and having aided so materially in preserving the organization of his party, at the expense of his own personal advancement and comfort, Judge Robinson resumed practice in Sacramento. He formed a partnership with Murray Morrison, since Judge of the Seventeenth judicial district which continued for two years. In 1853, Judge Robinson was again nominated by his party for the Supreme bench. Anticipating defeat, he yet obeyed with alacrity the call of his party to carry the banner of Whiggery in the final charge upon the triumphant foe. The result was as expected—the utter overthrow of the proud and gallant party to whose fortunes he had clung so steadfastly, and in whose last struggles he had been so conspicuous. Judge Robinson again returned to the practice of his profession in Sacramento. Soon after the general election in 1853, he entered into partnership with H. O. Beatty, lately Chief Justice of the Supreme Court of Nevada, and James B. Haggin, an old and wealthy citizen of Sacramento and San Francisco, now residing in New York. This partnership lasted two or three years, when Mr. Haggin withdrew, and his place in the firm was filled by Hon. C. T. Botts, afterwards Judge of the Sixth judicial district.

Judge Botts being appointed to the bench, Mr. Heacock subsequently State senator from Sacramento, entered the firm. Judge Robinson's connection with Judge Beatty continued till the year 1862.

Judge Robinson confined himself exclusively to his profession for several years, during which time he built up an extensive and lucrative business. During this important period in the history of Sacramento, his fidelity to his profession and his able management of the heavy litigation he was called upon to conduct, spread his fame as a lawyer throughout California.

In 1862, he accepted the Democratic nomination for attorney-general. In 1863, he was nominated by the same party for Supreme Judge, upon the reorganization of the Supreme Court. On both occasions he was defeated with the rest of his ticket.

He had now resided in Sacramento for thirteen years. The practice of law being almost dead in that place, which the great flood of 1860-61 had almost depopulated, he removed to Virginia City, Nevada, where he resided eighteen months. While residing in that State, he was nominated by the Democratic State convention for clerk of the Supreme Court. He could easily have been nominated for the higher place of Supreme Judge, but his friends determined to give him the nomination for the first-named position, because of the great emoluments attached to it. However, his party being defeated, the hopes of his friends were not realized.

Early in the year 1865, Judge Robinson returned to California, and settled with his family in San Francisco, where he resided until his death.

Judge Robinson ranked high as an impressive and eloquent speaker. He was a cogent, logical reasoner, a racy debater, and could hurl the shaft of irony with cutting effect. His clear and mellow utterances, his earnest manner, his dignified, polished diction, often reaching solemnity in its calm and graceful flow, rendered him at all times an agreeable and pleasing speaker. He was quite fond of poetry, and a close student of Shakespeare. In addressing public audiences, he was decidedly happy in his quotations from the immortal bard of nature. His private life was without blemish.

Judge Robinson, before he became of age, thought of studying theology; in fact, he did take up the study, with a view to becoming a clergyman of the Presbyterian Church. Although he changed his mind to that of the law he was always a Bible student and acquired a large fund of Biblical and theological knowledge.

He married at Galveston, Texas, before removing to California, Miss Mary Crittenden, sister of A. P. Crittenden. Mrs. Robinson died at San Francisco some years ago. Among their children surviving are C. P. Robinson, the San Francisco attorney, and Mrs. Salisbury, the wife of the capitalist, Monroe Salisbury.

ISAAC E. HOLMES.

Isaac E. Holmes was one of the most interesting characters that ever adorned the legal profession in any country. He brought to California a national fame. A native of South Carolina, he graduated from Yale college and studied law with Daniel Lord. He commenced the practice in Charleston, South Carolina. His splendid gifts of oratory added to his great learning, made him prominent in politics at an early age. He represented his native State in the lower house of Congress for six consecutive terms. The old *Congressional Record* reveals his power of expression and his brilliancy in debate. Some specimens of his eloquence are to be found in Williston's "Eloquence of the United States."

Holmes came to California in 1851. For some years he boarded with Thos. W. Freelon, John B. Felton, and other genial legal spirits, at Madame Parrain's celebrated private boarding-house on Clay street, near Powell, where the table was constantly kept "on a roar" by his animated and sparkling talk. His literary taste was superb—absolutely exquisite. He was impulsive, excitable, yet peculiarly gentle and companionable. Of course, the circle of his friends was very large. He was especially accomplished in English and Latin literature. His conduct of causes showed very keen powers of observation, and occasionally he would turn aside from stern argument and indulge in the most melting pathos. An eloquent speech or a tender poem would powerfully move him. When Freelon read to him Webster's oration on Greek Independence, he betrayed violent emotion. When the Judge, at another time, in one of their delightful chats, recited Tennyson's "Bugle Song," he shed tears. He was a money-making man, but an improvident one. He was constantly specu-

lating. He had little business sagacity, yet made and lost several fortunes. At one time he bought an interest in a flour mill, which he exchanged for the since-well-known Piedmont Springs property. At the outbreak of the war, he returned with his family to the East, with the firm conviction that his great influence in his native State, as well as in Washington circles, could be effectively exerted in the interest of peace. He labored faithfully to this end, but of course to no purpose. He died in Charleston, South Carolina, in 1864. After his death, Captain Blanding, who held his power-of-attorney, sold the Piedmont property for $30,000, which sum, in addition to other real estate which he had left in California, placed his family above the reach of want. His memory is delightful as song—let it blend with the melody that so moved his soul:

THE BUGLE SONG.

The splendor falls on castle walls,
And snowy summits old in story;
The long light shakes across the lakes
And the wild cataract leaps in glory.
Blow, bugle, blow, set the wild echoes flying;
Blow, bugle, answer echoes, dying, dying, dying.

O hark, O hear! how thin and clear,
And thinner, clearer, farther going!
O, sweet and far, from cliff and scar,
The horns of Elfland faintly blowing!
Blow, let us hear the purple glens replying;
Blow, bugle, answer echoes, dying, dying, dying.

O, love, they die in yon rich sky,
They faint on hill or field or river,
Our echoes roll from soul to soul,
And grow forever and forever.
Blow, bugle, blow, set the wild echoes flying,
And answer, echoes, answer, dying, dying, dying.

GEORGE CADWALADER.

One day in 1855, in Sacramento city, as George Cadwalader stood behind his rude mercantile counter, looking through the window, musing over the actualities of the past and the possibilities of the future, he said to himself, "I will become a lawyer."

He did not resolve upon sudden impulse, for that had been counter to his nature. Like most men of giant bodily frame, his physical movements were slow. Conformably, his mental processes were deliberate. He had long passed the age at which the average law student takes up the noble science. His sudden resolution to embrace the legal profession was a departure from an established law of his being. It proceeded from intuition, probably.

If he had failed in his efforts to become a lawyer, we might censure him for not staying behind his counter. But, as he achieved success, we must be glad that he emerged from bags and bottles to enter, not a more honorable, but a more delightful realm.

George Cadwalader was born in Zanesville, Ohio, in 1830. His great grandfather, a native of Wales, settled in Pennsylvania two years before William Penn, and lies buried in the churchyard at Chester, near Philadelphia. George was the first lawyer of his line, as far as it can be traced back. He received a common school education in Ohio, and came with his father, and father's family, to California in 1849. The route was unusual and picturesque; down the Mississippi to New Orleans, thence to the mouth of the Rio Grande, thence across Mexico to Mazatlan, thence in a schooner to San Francisco, which was reached in July, 1849. The family settled in Sacramento, where the father died in 1879, aged seventy-nine years. The latter had been, at different times, a steamboat captain, a canal-builder and the owner of a flour mill. He was much given to the study of science.

Young Cadwalader went at once to the mines. He was nineteen years old. The virgin sands panned out to him his share of gold, and in two years he became a merchant. He went back to Sacramento and followed mercantile life until 1855, being once utterly ruined financially by the great fire of 1852.

In 1855, as stated, he determined to become a lawyer. It was a bold resolve. He was not a collegiate. He was twenty-five, and the year was '55; the Sacramento bar was then what it has never been since; that is, there were never so many bright minds at that bar as at that time.

Mr. Cadwalader went to Colonel Philip L. Edwards, and said he would like to study law. Colonel Edwards encouraged him, told him to study—to read every book in his library, if he wanted to, and when he wanted to ask a question or a dozen questions, to do so—and to make that office his place of study so long as it pleased him.

The young man was a close reader, and a wary observer, but he did not study law any

longer than the law allowed, as the saying goes. He studied only nine months. He was eager to get into harness, for boyhood was far behind him.

In March, 1856, he was admitted to the Supreme Court and in the same month made his maiden argument before the Sixth District Court (Judge A. C. Monson) in a case which involved the jurisdiction of the old Superior Court of San Francisco. He had the good fortune to prevail in this case, and so to set out auspiciously upon his profession.

When Judge Stephen J. Field was Chief Justice of our State Supreme Court, he appointed Mr. Cadwalader chairman of the board of examiners to pass on the qualification of applicants for admission to the bar. He held this place of honor without emolument for three years. The questions put by him to the Blackstones in embryo must have elicited many original answers. We recall one. The stereotyped question of "What is law?" was put to a dish-washer who had "studied law," and had presented himself for examination.

Question: "What is law?"

Answer: "A system devised by Parliament to prevent the rich from oppressing the poor."

Mr. Cadwalader had the pleasure of meeting E. D. Baker at the bar on the occasion of that eloquent man's first appearance in the interior of the State. He did not feel much pleasure when he found who was to be his adversary, for Baker, though our valleys had not yet resounded with his voice, nor our hills echoed back his silver tones, had even then a national fame as a speaker. Cadwalader met him before Judge A. C. Monson and a jury in Sacramento. Mr. Joseph W. Winans was suing Hardenbergh & Henarie, of the Orleans Hotel, to recover $3000 on a promissory note, given for legal services. It is not often that one can stand against his own note. The defense was made by Hardenbergh alone, who said his partner made the note after the firm was dissolved. Henarie himself testified to the contrary. Baker for the defendants made a felicitous effort—of course, he did—but betrayed clearly that he was overwhelmed by the evidence. The plaintiff secured a verdict, and, an appeal being taken, the Supreme Court affirmed the judgment.

From the time he commenced practice, in 1856, Mr. Cadwalader was continuously engaged in his professional work. He never ran for office. His practice embraced all kinds of cases, and, like McAllister, he was not assigned to any specialty. He never had a partner. He was, perforce, a great traveler. He was frequently seen in San Francisco, and the visitor to any court-house of the interior was more likely to meet him than any other non-resident lawyer. He said to us once that this feature of his practice was very agreeable to him. He liked to try a case at San Francisco this week, at Sacramento next, then strike for a mountain court-room. His movements recalled those of leading lawyers in the older states at an earlier day—they kept swinging round the circle of the circuit.

The extent of this gentleman's practice may be realized when it is said that he argued some fifty cases per year in the Supreme Court alone. The published reports will not reveal so many, as very many decisions do not appear therein. Some industrious law-compiler could make a very valuable book of the most important unpublished decisions.

In a case which he took to the Supreme Court, he had the principle established that telegraph companies were common carriers and were held to the same kind of legal responsibility. Subsequently, the territory of Nevada gave a certain telegraph company the exclusive right to run wires through that territory; and the grant was confirmed by the Nevada State constitution. Despite this, the Atlantic and Pacific Telegraph Company ventured to invade the sagebrush state. Litigation followed, of course, and the company went into court with a great array of counsel. Mr. Cadwalader represented the Atlantic & Pacific. He made the point that the Nevada constitution conflicted with the Constitution of the United States—that telegraphing was commerce, and as such its regulation was beyond the reach of a state. The Nevada Supreme Court, through Judge B. C. Whitman, agreed with him, holding that, although the telegraph was unknown at the time of the adoption of the Federal Constitution, it fell under the head of commerce as therein used, inasmuch as it was a great instrument of commerce.

When the California Pacific railroad passed into the possession of the Central Pacific, the road was heavily mortgaged to German bondholders. The latter brought suit to have the California Pacific Company declared bankrupt, because of its failure to pay coupons. Mr. Cadwalader represented the bondholders, and he prevailed. The elaborate opinion of Judge Ogden Hoffman may be found in the National Bankruptcy Register, Volume XI, page

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103. It has been followed by the bankruptcy courts throughout the United States. The case was appealed to the United States Circuit Court, where it was tried before Judges Field and Sawyer. Before any formal decision was made, Judge Field stated that Judge Hoffman's judgment would be affirmed. Shortly thereafter the Central Pacific Company turned over to the German bondholders bonds worth $2,000,000, besides $150,000 cash. In this controversy Mr. Cadwalader had the pleasure of confronting Judges S. W. Sanderson and Robert Robinson, Mr. S. M. Wilson, John B. Felton and McAllister & Bergin. The briefs in this case were like books—even the physical labor which they cost must have been very great.

Mr. Cadwalader was counsel for the lady plaintiff in the case of Powelson vs. Powelson, reported in 22 Cal. 358. His client obtained a divorce on the ground of extreme cruelty, and the case is a leading one, in this: It established that extreme cruelty may consist in words. In that case the defendant had wantonly charged his wife with adultery. The decision has been followed ever since.

In 1869, the California Pacific Railroad Company built its depot in Sacramento before it had devised a way to get to it. The tracks of the Central Pacific were in the way, and the latter company refused to let its rails be cut. A variety of suits followed. Finally, under an order of court, the California Pacific, Mr. Cadwalader's client, cut the tracks. A commission was appointed by the court to assess the damages, and the Central Pacific was awarded $370,000. Sacramento was not big enough to do justice to this controversy, and resort was had to San Francisco. Judge Dwinelle set this award aside. Tracks had been cut, but before either of the two companies could cut the other's throat, the Central bought out the California. It was this fight that led to Judge Sanderson's resigning from the Supreme bench to enter the service of the Central Pacific.

The German Catholic congregation of St. Boniface once owned a lot of land and place of worship on Sutter street, opposite the Lick House, San Francisco. It had been dedicated to them forever for their use as a Catholic body. Archbishop Alemany was the sole trustee, and under the impression that a site removed from the heart of the city would be more suitable for the congregation, he brought, through Messrs. Casserly and Barnes, a suit in equity against the members of the congregation, F. S. Wensinger and others, to obtain a decree for the sale of the property, and the investment of the proceeds in another location. A large majority of the defendants resisted the suit through Mr. Cadwalader. They were beaten, and appealed. The Supreme Court affirmed the judgment, and the property was sold. The court required the archbishop to give a heavy bond ($140,000), and directed the court below to fix Mr. Cadwalader's compensation, the same to be paid out of the proceeds of the sale. Judge Morrison fixed Mr. Cadwalader's fee at $1000. The property was worth $65,000, but has since doubled in value.

This case stands almost alone. It conflicts with the doctrine oftentimes upheld, that in this country the courts cannot exercise the power with which the Lord Chancellor of England is clothed; that he having control of charities, may execute them *cy pres*; but that, in this country, the legislature must grant authority.

Mr. Cadwalader did not often use his pen or voice, except in the line of his profession. About 1857 he contributed a series of political articles and reviews to the Sacramento *Union* over the name "Socrates." They attracted wide attention. He also wrote occasionally an article for the old *Standard*, Judge Botts' paper. He made the principal speech at the banquet given to Judge Botts on that gentleman's retirement from the bench of the Sixth District Court. He wrote the "In Memoriam" of Judge Joseph G. Baldwin, which appears in the Supreme Court reports. Once or twice he was betrayed into verse, but it was fortunate for him that he did not have to depend on poetry for a livelihood.

In person he was atlantean, like Terry. He never did anything on the "spur of the moment." His conduct of a case was in keeping with his giant stature. He created the impression of immense strength, and lawyers who had not thoroughly equipped themselves to meet him felt like getting out of his way. No ordinary obstacle could check his progress. He started with caution, forecast with prudence, and moved forward with wide vision and firm purpose to his goal. He had none of the arts of the orator, and made no attempt to persuade except by argument. He had good habits, and acquired a fine competency.

Mr. Cadwalader married Eliza B. Wells in 1873. The lady was a young widow, a resident of Iowa, and was visiting Sacramento

when he met her. She was a tall and handsome blonde, of rare graces and accomplishments, and bore Mr. Cadwalader two sons and a daughter.

In the spring of 1882, Mr. Cadwalader visited Washington, where he was called to attend the Supreme Court of the United States. On his return an old Californian who accompanied him gave us many laughable reminiscences of the trip, some of which can be mentioned.

Mr. Cadwalader seemed to take particularly to two distinguished men who did not take to each other at all—namely, Roscoe Conkling and James G. Blaine. He met them personally, and several times enjoyed their society and conversation. After observing the two Senatorial leaders, Edmunds and Bayard, he declared they were overrated; that their fires were banked up, and it would take another rebellion to put them into healthy life and action.

Edmunds was, he thought, a censor, a critic, a fault-finder. He lectured other senators so often that it was taken as a matter of course. Many rather liked to hear the old man indulge in his favorite pastime. Bayard's touch would chill you on a hot day, Southron though he was. Conkling, a Northern man, was really more a Southern man in temperament than Bayard was.

Judge Field, with whom Cadwalader was intimate, asked the latter what he thought of the appearance of the Supreme bench. The answer was: "Judge, this is supposed to be a free country, and if Judges want to wear petticoats, I don't know any law against it; but I am not impressed with the spectacle."

He met H. J. Jewett, who impressed him very favorably. Jewett was a New York lawyer, had his barrel of money, a fine presence, was receiver for the Erie railroad, at a higher salary than was ever paid before for similar services ($40,000 a year), and on the whole was quite a respectable fellow.

Blaine also made a decided impression on the Californian. His short hair had taken on a delicious white, evidently the product of toil rather than age. His build was compact, his articulation vigorous, his ideas precise, his conversation full of intelligence and charm. He would captivate almost anybody, but Conkling. Conkling was chivalrous and generous, a warm friend and a warm hater. His chief consolation in retirement was that Blaine was in the same fix. But Blaine was irrepressible. He lived near the White House in brilliant expectancy. He was very approachable and companionable. He would ask you where you were from, where you were born, and extract from you all you ought to tell, and converse in a way to please both you and him.

"What thing has chiefly attracted your attention in Washington?" Blaine asked Cadwalader. "The fact that the wise men are in retirement and the stars yet pursue their courses," was the reply. After a moment's hesitation, Blaine said, in pleasing recognition of the compliment, "I never thought I was a wise man but once. I was at Harrisburg with a friend. We were invited to a game of poker. We did not accept. We were urged, and my friend yielded. I held out. My friend carried everything before him, and I told him at the time that we were two of the wisest men of the country—he had won all the money, and I had kept out of the game."

"They are trying to handicap Blaine," said Cadwalader, "but they can't do it. His skirts are clear. You'd think so if you saw him—if for no other reason, because you would believe that no man could entrap him."

Blaine's question, put to Cadwalader, brings to mind the entry of Nesmith, of Oregon, into the United States senate, A. D. 1861. On the day he was sworn in, after adjournment, he got into a pleasant chat with half a dozen senators.

"Mr. Nesmith," said Senator Wilson, "what has surprised you most in Washington?"

"Well," answered Nesmith, "when I had got settled in my seat, and took a good look at all of you, I said to myself, 'I wonder how in the devil I got here.'"

"Oh, you will feel perfectly at home when you come to know us," said Wilson.

"And the next thing I said to myself was," continued Nesmith (not noticing the remark of the Massachusetts senator), "'I wonder how in the devil all the rest of these fellows got here?'"

At the opening of the year 1884, Mr. Cadwalader removed to San Francisco. He had been there only about one year when he died. His estate, which was administered upon there, was appraised at $60,000.

N. GREENE CURTIS.

N. Greene Curtis was a bar leader with a large practice in Central and Northern California for forty years and more. He was a public man of exceptional popularity, and won

his political contests in a county where his party was accustomed to defeat. A native of North Carolina, he came to California in 1850, locating in Sacramento, where he lived until his death. In 1853, at the age of twenty-seven, he was elected city recorder, or police judge, of Sacramento, and held the office by re-election for three terms. We once saw him leave his court-room in the old building that commanded a view of Front street, running along the river, walk slowly down the middle of the thoroughfare with his eyes on the ground for a block or so, and escort back to jail a countryman who had beaten with a board a balking horse until the blood trickled from the creature's flank. It was the first time we ever saw a Judge arrest a man. Judge T. H. Wells, recorder of Santa Monica, was compelled to arrest a man on the street there as late as 1899 for annoying some ladies. It is a fact that policemen are sometimes not on hand when wanted.

Leaving the bench, Judge Curtis engaged in law practice until about 1885, when he retired with a large competency and a fine home. It has been the lot of few men to enjoy such unbroken success. He was of fine person and address, a really good public speaker, but nothing like the orator some of his admirers thought him to be. Polished, but frank, there was much charm in his manner and speech. Everybody knew him and liked him. This was the secret of his habit of walking with his eyes down, especially between his home and his office. Every other man, woman and child was inclined to stop him and say a word, and life was too short for this.

That other early Sacramento advocate, Judge James H. Hardy, "Tim" Hardy, furnished an interesting contrast to "Greene" Curtis in this respect. He was less polite and less popular, but was as universally known, and he consumed from one to two hours in walking the half-mile between home and office, because so many persons would stop him to talk. Indeed, he never arrived at any goal on time.

The most important case with which N. Greene Curtis was connected was that of Mrs. Laura A. Fair, who took the life of the eminent lawyer, A. P. Crittenden, on the Oakland ferry-boat, November 3, 1870. The slayer, after being convicted of murder and sentenced to be hung, was granted a new trial "on a technicality." Curtis, who had not been her attorney before, was now brought in, and, in the language of the day, "cleared her."

Curtis was a Democrat. He was elected to the lower branch of the legislature in 1861, and twice elected to the State senate, in 1867 and in 1877. His legislative record could be made the subject of an interesting article. He had been a Whig in earlier days. In 1860 he was a Major-General in the N. G. C. (his own initials). He made the annual address at the State fair, September 20, 1877. Some ten years later (and about ten years before his decease) he was general solicitor for the Southern Pacific Railroad Company, at the capital, and he read a paper at a meeting of raidroad managers at Chicago, February 22, 1887. On August 8, 1887, he testified before the Pacific railway commission at San Francisco. He was grand master of the Grand Lodge of Masons for four years. His end came while he was seated in a chair in his bed-room, in the early morning of July 12, 1897. His years were seventy-one.

JOHN W. DWINELLE.

John W. Dwinelle, who is referred to in the article on the "Adoption of the Common Law," was mysteriously drowned at Port Costa, January 8, 1881. Among his many able public addresses, the most interesting to us has always been that delivered at the laying of the corner-stone of the San Francisco City Hall, December 28, 1871. His "Judicial Trial of Jesus" is in the *Bulletin* of March 6, 1877. He practiced in San Francisco for thirty years. He made his home in Oakland, and represented Alameda county in the Assembly, 1867-68. He was a native of New York, and sixty-two years old at his death. A heavy-built man, he was yet never sluggish, and crossed the great bay nearly every day. He was a genial talker, and had much public spirit.

*Curtis did a little acting in his address to the jury in this Fair case, which was not at all happy, although no harm came of it. After expressing his confidence that the jury would acquit his client, he turned towards her, and, looking in her face, said, "But, Madame, if you should be executed!" We sat close by, and thought of Baker and Tom Fitch and Edgerton, and we involuntarily compared this performance to that of Hyperides, who, while defending the irresistible Phryne on a charge of atheism, when he thought his eloquent words were failing, suddenly unveiled the beautiful woman's bosom to the assembly of her judges—she being immediately acquitted and carried in triumph to the Temple of Venus —so they say.

We write these lines of Mr. Dwinelle, sitting in the office which he occupied in 1870-71, when he was in partnership with John H. Saunders, and which he continued to occupy after that firm was dissolved for ten years before his death, at 509 Kearny street.

Mr. Dwinelle was one of the organizers of the San Francisco Bar Association. The memorial of that body at his decease was presented to the Supreme Court by James McMillan Shafter. In moving the spreading of the memorial on the minutes, Mr. Shafter spoke feelingly and eloquently of prominent features in the character of the deceased—of his learning in the law, of his affection for literature, his insatiable appetite for reading, his breadth of knowledge, his study of human nature, his devotion to the classics. "His frequent, if not constant companion," said Mr. Shafter, "was his Greek Testament." "Familiar with the Spanish language and archives," he continued, "it was with him a labor of love, supplementing the work of Stillman, Soule, and others, to gather up the isolated facts and scraps of history of early times, that nothing might be lost.

"His treatises upon the history of California and his labors as shown in our legal reports illustrate alike his industry and his learning.

"His zeal led him often into what may be called curious investigation.

"Thus impelled he entered into a public discussion as to whether the bay of San Francisco or Sir Francis Drake's bay was the place which the great navigator visited 300 years ago, Mr. Dwinelle asserting Drake's bay, and a learned and accomplished member of the medical profession, Dr. Stillman, maintaining the claims of the bay of San Francisco to that distinction. In the ardor of this debate, hearing there was a copper bolt driven into the rocks at Point Reyes, and finding in Hakluyt tha a metallic plate had been bolted to a rock by Drake, Mr. Dwinelle made a visit of exploration there. After answering all questions, I furnished him all necessary aid. Returning, he seemed in some sense exultant. Beyond a gentlemanly appreciation of the kindness which he had received, he seemed to have noticed little of our present life.

"The white cliffs which procured for the coast the name of 'Nieu Albion' from Drake, he saw, but the herds of game, the conies, of which Hakluyt spoke, with the bolt and plate of metal, were not seen. But the ships, the red cross of England, the shouts of her mariners, the sound of oars and harquebuss, the Indians, painted and feathered, sights departed, sounds lost in air, men dust for three centuries, he had brought back with him living and moving realities, and as to the disputed point, a perfected faith."

After reciting the circumstances of Mr. Dwinelle's death, Mr. Shafter said:

"It was only the other day that I saw in a Vermont paper an obituary notice of an old lawyer and friend. With many gracious commendations from a generation of lawyers of my native county, I was declared to be the last survivor.

Two Vermont lawyers, both of whom were my partners in that state, one of great eminence by his professional learning, which was exhibited in the great international case ex parte Holmes, creating or making apparent the necessity for the Webster and Ashburton Treaty, both are dead. Of those in this State with whom I have been associated General Williams died unhappily and by violence. Simons and Fleming, tracked through every lane of life by consumption, at last, wearied, gave up the contest and rest from their pain.

"My brother, an ex-Justice of this Court, smitten by disease, the result of loyal and inordinate labor in his profession, died in a foreign land. His prayer for death, if it was the will of God, rather than life with mental aberration, was not answered. The cup of bitterness was commended to his lips. Unhappy paradox—outliving the death of all that was himself.

"To me at least it is not devoid of interest that Felton, Goold and Dwinelle participated in the obsequies of Judge Shafter, and from the hand of the latter was the just and honorable memorial now a part of the records of this court. Of the firms of Shafter & Goold and Shafter, Goold & Dwinelle, I alone remain. Turning to the older members, those whom the first resolution terms 'the veterans and sages of the bar,' I find this, in some degree, the common experience. In thinking of our dead companions, we gather our garments about us and guard our footsteps, for we feel we are treading upon graves."

Mr. Dwinelle's brother, his junior, Samuel H. Dwinelle, was Judge of the old Fifteenth District Court, for Contra Costa county, and a portion of San Francisco, during the whole period of its existence, 1864-1879. He presided at the first trial of Mrs. Fair for the murder of the eminent lawyer, A. P. Crittenden, and sentenced her to be hung. He was defeated for Supreme Judge on the Republican ticket in 1873. He died suddenly of apoplexy, January 12, 1886, very nearly sixty years old, his brother's age. He had been practicing law for a few years in partnership with David McClure.

FREDERICK BILLINGS.

Frederick Billings was one whose "chariot rolled on fortune's wheel." Born of American parents in Vermont, in 1823, he was a graduate of the University of that state, and arrived in California on April 1, 1849. He was of the pioneer law firm of Halleck, Peachy & Billings, and survived his associates, General H. W. Halleck and Archibald C. Peachy. This was a great and rich law firm. It owned at one time Montgomery Block, in which its offices were always situated. Trenor W. Park was a member of the firm for a few years, withdrawing in 1855.

Mr. Billings was a projector of the old College of California, which developed into the State University. The portrait of Bishop Berkeley, which adorns the interior of one of the university halls, was his gift, presented through President D. C. Gilman, in 1873. The donor wrote to President Gilman at the time the following pleasant letter:

"WOODSTOCK, Vt., July 18, 1873.

"When I was in California in April last, you asked me if a copy of Smibert's portrait of Bishop Berkeley in the Yale School of Fine Arts could be procured for the university. The question was a felicitous suggestion. It made known to me how, in a very appropriate way, I could give a little proof of my great interest in the institution which may be said to have grown out of the College of California, with whose history I was identified through all its struggles from the very beginning.

"I say in a very appropriate way, for it is most fit that he who gave the name of the good Bishop to the site of the university should have the privilege of placing his portrait in the university halls. And, as the suggestion was yours, I thought by promptly following it, I should give token of my great gratification that you are the head of the university, and my sincere faith that you will harmonize all the complex elements of such an institution in such a field, and develop them into a great success. The portrait will be on its way to you this week. You are familiar with the original picture of the Bishop and his family. If not the only picture of him, it is recognized as the most authentic. The portrait is wonderfully well painted, as might have been expected, by Professor J. W. Weir, and we all should be gratified for the special labor he has given it. Please present it for me to the university, when you take possession of the new halls at the coming commencement in July. The university looks out through the Golden Gate of the Pacific to the islands of the sea and the uttermost parts of the earth. The portrait, then, of this Christian philosopher, who could find in Plato the revelation of the New World, and who prophesied so truly of the course of empire, should be something more than a portrait. It should be like an invocation and inspiration of the largest, broadest and most earnest spirit of learning and Christianity. So may it be. Faithfully yours,

FREDERICK BILLINGS.

"To President D. C. Gilman."

Professor Henry Durant founded the university and selected its site; Mr. Billings suggested the immortal name distinguishing the spot. A letter of Mr. Billings upon this point appeared in the San Francisco *Bulletin* of August 1, 1873.

Mr. Billings arrived in San Francisco on the same steamship with Bezer Simmons, who married his sister. A few years later he had become wealthy from law practice and investments in real estate. His professional work was all done in San Francisco. He was engaged with his firm in many important causes, and always had a large income. He loaned John C. Fremont $150,000 on the latter's princely Mariposa estate. He got his money back when the estate was purchased by Hiram Ketchum & Co., of New York.

He was one of the six original members —three men, three women—who organized the First Presbyterian church of San Francisco, May 20, 1849, Rev. Albert Williams being the pastor. He was secretary of the citizens' meeting which organized the San Francisco Bible Society, October 30, 1849. This was auxiliary to the American Bible Society. Mr. Billings addressed that meeting. On September 14, 1862, he spoke at a large mass meeting in aid of the Union Army Relief Fund. He was a polished gentleman of high tone and quiet bearing; unpretentious, but an easy and effective speaker.

The legislature of California passed a concurrent resolution on February 27, 1866, recommending Mr. Billings to President Andrew Johnson as a member of the cabinet.

Mr. Billings did not practice law very long. For years, down to 1872, he gave his business (in the city directory) as that of real estate, still occupying his old law offices. He then went back to his native state, and there spent the last quarter of his prosperous life. He married then, for the first time, his wife being the daughter of a dentist of New York city, distinguished in his calling. He made visits to California thereafter, and his eldest son, Parmly Billings, was born in this State. This son died in Chicago at the age of twenty-five, in May, 1888.

Frederick Billings' last visit to this State

was in March, 1887, when he came with his family in his private car, "Wanderer."

The Billings Library building, at Burlington, Vermont, was Mr. Billings' gift. It was completed in August, 1885, costing $150,000. A Burlington correspondent at that date gave this incident of Mr. Billings' start in life:

"After graduating at our university he found himself, like most graduates, with little practical knowledge and no money. So one day, meeting the late Mayor Catlin of this city, at that time a prosperous business man, he solicited a loan of $1000, offering his integrity as security. After some consultation, Mr. Catlin advanced the money, and young Billings started for the then almost unknown land of California. Here at once he met with success, and shortly returned to Mr. Catlin the $1000 and interest. Later misfortune overtook his benefactor, who died in this city but two years since, but a check from Frederick Billings was always at his disposal for all his needs, and the venerable first mayor of Burlington died with the satisfaction that he in prosperity had assisted one young man who remembered him in adversity. Mr. Billings is now in the prime of life, possessing good health and a handsome competence, which he persists in placing where it will do the most good."

America, a Chicago weekly, some time before Mr. Billings' death, said the following:

"While the benefactions of Andrew Carnegie are heralded to the world by all the trumpets of fame, known to an international advertiser, who knows anything of the donations of Mr. Billings of Woodstock, Vermont? And yet Mr. Billings, in addition to spending $40,000 in reconstructing the Congregational church at Woodstock and giving $50,000 to the University of Vermont for the endowment of the library bearing his name, has given $50,000 to Amherst college to endow a professorship in memory of his son, Parmly Billings, who was graduated there in 1884, and $50,000 to Mr. Moody's Mount Hermon school for boys, to be known as the "Ehrick Billings Endowment Fund" in memory of his son Ehrick. All these gifts were made by checks payable at once to the full amount and were not accompanied by any embarrassing conditions. If Mr. Billings wants to have his good deeds advertised, he should move from Woodstock to some newly purchased Scotch estate."

Mr. Billings had a distinguished career in Vermont as a railroad man. He bought a tenth interest in the Northern Pacific when the stock was at its lowest. He became a director, and later president of the company. He retired voluntarily with a fortune of about $10,000,000. Henry Villard succeeding him. He died at his home in Woodstock, September 30, 1890, peacefully, aged sixty-seven years.

JAMES A. McDOUGALL.

"McDougall was the giant of this bar. No other man ever left such a lasting footprint upon Californian soil."

So spake to us a pioneer lawyer now long ago. He was a judicious observer, and upon inquiry we found his opinion concurred in by other bar veterans of nice perception, who knew how to winnow chaff from wheat.

James A. McDougall was born in Albany county, New York, in November, 1817. He received a grammar school education. He early evidenced a fondness for mathematics and civil engineering. He aided in the survey of the first railroad built in the State of New York—that between Albany and Schenectady. After the completion of that work, he commenced the study of law. Before completing his studies he removed to Illinois, settling in Pike county, in 1837. There he was admitted to the bar, and speedily launched into the full tide of practice. In 1842, at the age of twenty-five, he was elected attorney-general of the prairie state on the Democratic ticket, and at the end of his term was re-elected, serving four years. Small in stature, he had uncommon strength of physical constitution, as well as of mind. He was a brilliant speaker, skillfully wielding the weapons of repartee, humor and sarcasm, and made himself one of the most noted speakers of the west. In Illinois he met a score of men, who, having become prominent in that state, attained, like himself, a greater celebrity in California—among the number, General Baker, William I. Ferguson, Thompson Campbell, Colonel Hoge, Samuel M. Wilson, Judge James H. Hardy, John R. McConnell, and O. C. Pratt.

McDougall and Baker were especially intimate. Often they traveled the circuit together. Perhaps the two men for whom McDougall cherished the highest admiration were General Baker and Stephen A. Douglas. He himself declared that these two men were the nearest to him by the ties of association and friendship, and among the ablest that ever discoursed counsel in the United States senate. Below will be given an allusion of McDougall to Baker, at once scholarly, tender and pathetic, and which aptly illustrates McDougall's masterly power of expression.

In 1849 (it may be recorded but cannot be explained) McDougall left Illinois to push further west. He had become one of the most popular men of his state. On the stump or in the forum, his power was universally recognized, his legal services were in constant demand, but the spirit of adventure took firm hold upon him. He made up an expedition and led it to the headwaters of the Rio Del Norte—the purpose being to explore the country and establish a settlement. Having arrived at his destination, he heard of the discovery of gold in California. Returning east, he took a passage with his family on the California, the pioneer steamship, for San Francisco. There he at once entered upon the practice of law. One year after his arrival he was elected attorney-general of the state. At the close of his term he was elected a member of the lower house of Congress. In that body he chiefly distinguished himself by his advocacy of a Pacific railroad. On this subject he was particularly capable of speaking. He spoke as a lawyer, a statesman, and a civil engineer. He declined a renomination for congress, and resumed the practice of law, with the late Solomon A. Sharp, in San Francisco. Mr. R. H. Lloyd was a clerk and student in the office. The rooms of this once notable firm were at 625 Merchant street.

At the outbreak of the late war (1861) General McDougall, by a combination of Republicans and Douglas Democrats, was elected a United States senator. In the senate again, he took up his old theme of a Pacific railroad, and, in addition to other arguments, urged the government to build the road as a military necessity. He lived to see the road completed.

When his name was presented as a candidate for the senate, his partner, Solomon A. Sharp, was his most enthusiastic friend. On one occasion during the balloting, the situation was such that McDougall's friends deemed an adjournment for one day absolutely necessary. A motion to adjourn over was voted down. Lee and Marshall's circus was then performing at the capital. Mr. Sharp went out and engaged the entire circus for the special entertainment of the legislators. He had the manager send tickets of invitation to every solon and kept the performance going all the next day and night. It cost Mr. Sharp $1,700, but his purpose was accomplished. Neither branch of the legislature had a quorum, and on the following day his friend was elected to the senate. General McDougall was one of the most brilliant debaters who ever sat in the United States senate. He participated freely in discussion; and when it was known that he would speak, the senate chamber was filled by members of the lower house, foreign ministers being among his auditors, and the galleries crowded. Among the subjects upon which he addressed the senate were the expulsion of Senators Bright and Johnson; emancipation; slavery in the District of Columbia; the establishment of a steam line to China and Japan; the Civil Rights Bill; the Freedmen's Bureau; the continental telegraph line; the National academy; the reconstruction measures; and the sale of liquors in the National Capitol Building. His speech on the latter subject being very brief, is appended to this sketch in full as a specimen of his humorous style. Perhaps the most polished effort of General McDougall's life was his speech in the senate on the death of his friend Baker, December 11, 1861. In this tender tribute he richly displayed his great learning, his rare powers of speech, and his stores of classic wealth. We must make room for a couple of extracts:

"He was too full of stirring life to labor among the moldy records of dead ages; and had he not been, the wilderness of the west furnished no field for the exercise of mere scholarly accomplishments. I say the late Senator was learned. He was skilled in metaphysics, logic and law. He might be called a master of history, and all the literature of our language. He knew much of music—not only music as it gives pleasure to the ear, but music in the sense in which it was understood by the old seekers after wisdom, who held that in harmonious sounds rested some of the great secrets of the infinite. Poetry he inhaled and expressed. The afflatus called divine breathed about him. Many years since, on the wild plains of the west, in the middle of a starlit night, as we journeyed together, I heard first from him the chant of that noble song, 'The Battle of Ivry.'

"He was an orator—not an orator trained to the model of the Greek or Roman school, but one far better suited to our age and people. He was a master of dialectics, and possessed a skill and power in words which would have confounded the rhetoric of Gorgias, and demanded of the great master of dialectics himself the use of all the materials of wordy warfare. He was deeply versed in all that belongs to the relations and conduct of all forms of societies, from families to states, and the laws which govern them. He was not a man of authorities, simply because he used authorities only as the rounds whereby to ascend to principles. Having learned much, he was a remarkable master of all he knew, whether it was to analyze, generalize or com-

bine his vast materials. It was true of him, as it is true of most remarkable minds, that he did not always appear to be all he was. The occasion made the measure of the exhibition of his strength. When the occasion challenged the effort, he could discourse as cunningly as the sage of Ithaca, and as wisely as the King of Pylus. * * *

"It is true cities and kingdoms die, but the eternal thought lives on. Great thought, incorporate with great action, does not die, but lives a universal life, and its power is felt vibrating through all spirit and throughout all ages. I doubt whether or not we should mourn for any of the dead. I am confident that there should be no mourning for those who render themselves up as sacrifices on any great, or holy cause. It better becomes us to praise and dignify them. It was the faith of an ancient people that the souls of heroes did not rest until their great deeds had been hymned by bards to the sound of martial music. Bards worthy of the ancient time have hymned the praise of the great citizen senator and soldier who has left us."

During his senatorial term General McDougall was a strong advocate of war measures, but never acted with the Republican party. His personal influence with Lincoln was very great. The two statesmen had been warm friends in Illinois, had practiced law together, and while opposed in politics, and dissimilar in some cardinal respects, each recognized and paid deference to the other's greatness.

At the close of his senatorial term General McDougall visited his native county of Albany, intending to pass a few months in rest and retirement before returning to California. There he died, at Albany, September 30th, 1867, a little less than fifty years of age.

Among the prominent causes which engaged General McDougall in San Francisco was the case of Cora, who killed General Richardson, United States marshal, and the James Baker divorce case. In the Cora case he was associated with General Baker. He and Baker frequently tried cases together. It was interesting to see how they would draw toward each other in a great case. Each seemed to add to the other's strength and appreciated the other's talents. McDougall would always open and Baker close the argument.

The Baker divorce case, one of the most interesting in all of the reports, may be found in the 13th Cal., page 87. The husband was the plaintiff. At the end of four months after the marriage his wife gave birth to a fully developed child. He returned her to her relatives and sued for a divorce on the ground of fraud. McDougall was his counsel. He failed in the District Court, but appealed, and the Supreme Court directed the court below to decree a divorce. Judge Field, in an elaborate opinion, Judge Baldwin concurring, declared that the defendant had been guilty of fraud, which went to the substance of the marriage contract, and vitiated it from the beginning.

General McDougall's briefs were models in style and arrangement, and revealed the thoroughly trained and broadly informed lawyer. He was subtle, logical and profound, and looked upon a subject from every standpoint possible. In speaking he challenged attention, not by voice or gesture or by any arts of oratory, but by his thoughtful, vigorous and polished sentences; while "his look drew audience and attention still as night." He was very lucid in expression, of pleasing address, and would sometimes speak for hours to the uninterrupted delight of court or jury. He was pre-eminently a thoughtful, studious man. He was open and frank in manner, full of fun, yet very dignified. No man had more pride of character or more pride in his profession.

It must be stated that his death at a comparatively early age was hastened by indulgence in the bowl—a vice which closed the lives of many brilliant men. He maintained his dignity of manner even in his revels, and in conversation at all times was one of the most engaging of men. His extensive learning was continually conspicuous, and statesmen and diplomats bowed to his imperial intellect.

The General was of Scotch extraction, and his wife and a son and daughter survive him.

The Senator's excesses in Washington furnished some first-class sensations. He prided himself on his "westernisms," in dress and manner. He was sometimes seen on the street at night wearing a Scotch cap. Once he rode a mustang at a breakneck speed along a leading thoroughfare, wearing spurs, a Mexican sombrero, and armed like a vaquero of the plains. He entered the senate, it is said, once with his spurs on. On one occasion, it is also told of him, he rambled off to a little village, and suddenly concluding to take a certain train at a depot a few miles distant, he endeavored to secure a carriage, but none being available, he hired a hearse, and lying down inside, had it driven to the depot. Before it was reached, the driver stopped at a wayside place to indulge in the General's favorite beverage. As the driver was about to

mount his seat again, the General, who intuitively took in the whole situation, exclaimed: "The corpse is dry, too; bring some whisky this way."

We will conclude this notice with the remarks of General McDougall on the resolution to prohibit the sale of spirituous liquors at the National Capitol Building, delivered in the United States Senate, April 11, 1866:

"Mr. President: It was once said that there were as many minds as men, and there is no end of wrangling. I had occasion some years since to discourse with a reverend doctor of divinity from the state which has the honor to be the birthplace, I think, of the present President of this body. While I was discoursing with him a lot of vile rapscallions invited me to join them at the bar. I declined out of respect to the reverend gentleman in whose presence I was. As soon as the occasion had passed I remarked to the reverend doctor, 'Do not understand that I declined to go and join those young men at the bar because I have objection to that thing, for it is my habit to drink always in the front and not behind the door.' He looked at me with a certain degree of interrogation. I then asked him, 'Doctor, what was the first miracle worked by our great master?' He hesitated, and I said to him, 'Was it not at Cana in Galilee, when he converted the water into wine at a marriage feast?' He assented. I asked him, then, 'After the ark had floated on the tempestous seas for forty days and forty nights, and as it descended upon dry lands, what was the first thing done by Father Noah?' He did not know that exactly. 'Well,' said I, 'did he not plant a vine?' Yes, he remembered it then.

"I asked him, 'Do you remember any great poet that ever illustrated the higher fields of humanity that did not dignify the use of wine, from old Homer down?' He did not. I asked him, 'Do you know any great philosopher that did not use it for the exaltation of his intelligence? Do you think, doctor, that a man who lived upon pork and beans and corn bread could ever get up into the superior regions —into the ethereal?' No; he must

> "'Take nectar on high Olympus,
> And mighty mead at Valhalla.'

"I said to him again: 'Doctor, you are a scholarly man, of course, a doctor of divinity, a graduate of Yale? Do you remember Plato's Symposium?' Yes, he remembered that. I referred him to the occasion when Agatho, having won the prize of tragedy at the Olympic games at Corinth, on coming back to Athens, was feted by the nobility and aristocracy of that city: for it was a proud triumph to Athens to win the prize of tragedy. They got together at the house of Phaedras, and they said: 'Now, we have been every night, for the last six nights, drunk; let us be sober tonight, and we will start a theme;' which they passed around the table, as the sun goes round, or as they drank their wine, or as men tell a story. They started a theme, and the theme was love—not love in the vulgar sense, but in its high sense—love of all that is beautiful. After they had gone through, and after Socrates had pronounced his judgment about the true and beautiful, in came Alcibiades with a drunken body of Athenian boys, with garlands around their heads, to crown Agatho, and to crown old Socrates; and they said to those assembled, 'This will not do; we have been drinking, you have not.' And after Alcibiades had made his talk in pursuance of the argument, in which he undertook to dignify Socrates, as I remember it, they required (after the party had agreed to drink, it being quite late in the evening, and they had finished their business in way of discussions) that Socrates should drink two measures for every other man's one, because he was better able to stand it. And so one after another they were laid down on the lounges in the Athenian style, all except an old physician named Aristodemus, and Plato makes him the hardest-headed fellow except Socrates. He and Socrates stuck at it until the gray of morning, and then Socrates took his bath and went down to the groves and talked academic knowledge.

"After citing this incident, I said to this divine, 'Do you remember that Lord Bacon said that a man should get drunk at least once a month, and that Montaigne, the French philosopher, indorsed the proposition?' I said to him further, 'These exaltants that bring us up above the common measure of the brute—wine and oil—elevate us, enable us to seize great facts, inspirations, which, once possessed, are ours forever. And those who never go beyond the mere beastly means of animal support never live in the high planes of life, and cannot achieve them. I believe in *women, wine, whisky and war.*'

"The reverend doctor replied, 'Well, General, you are right; but I cannot afford to say it.'

"I do not know but that it would be well for the sober senator from California to indulge himself somewhat more in generous wine: and I do not know but that it would be of service to the senator from New Hampshire, and I am sure it would have a kindly influence upon the senator from Massachusetts. I think all these propositions, all these regulations, all this style of determining liberties that ought to be common to all men by virtue of isometrical influence, is wrong, and I utterly protest against it. I think it was well when we had our lunchroom in the senate chamber, where we quietly sat down and drank our wine at our pleasure. The times have come to be so false that men dare not say what they honestly think to be the truth and the right. That sin of cowardice shall never come to my door. I say the whole proposition is wrong. Let the senator from Massachusetts, if he chooses, drink his wine as his forefathers did before they cut down all the apple trees in the state. Because apple trees raised apples, and apples made cider, and cider made brandy, they cut them down all through New England; but in his grandfather's time every

gentleman of Massachusetts, or every man who was able to afford it, had on his sideboard a bottle of good apple brandy, and he offered it to his guests the moment he received them.

"Those were the good old times when gentlemen were abounding in the land. This kind of regulation tends to degrade the dignity of the senate."

OGDEN HOFFMAN.

Judge Hoffman's ancestors came from Holland, and were among the earliest settlers of New Amsterdam. His father, Ogden Hoffman, a native of New York, was long a leader of the American bar, and of the Whig party. He opposed the Mexican war. In debate he was brilliant, in argument clear and strong, in style ornate, a master of the art of expression. He frequently made political speeches, and his fame as an orator was national. Edwards, in his "Pleasantries," applies to his oratory the words used by Charles Butler in speaking of the style of Sir William Grant:

"The charm of it was indescribable; its effect on the hearer was that which Milton describes when he paints Adam listening to the angel after the angel had ceased to speak.

"The angel ended, and in Adam's ear
So charming left his voice, that he awhile
Thought him still speaking, still stood fix'd
to hear."

This (the elder) Ogden Hoffman was the exponent of the New York bar when it was called upon to manifest its respect for the memory of the venerable Chancellor Kent, in January, 1848. At his own death, in May, 1853, a crowded meeting of the bar was held, at which William M. Evarts and other able men spoke of his forensic triumphs and his greatness of mind.

The transmission of brain force from father to son, through several generations, marks this line of Hoffmans as one of the comparatively few families which have been so distinguished. The other names which make up the roll of American hereditary genius are Adams, Bayard, Beecher, Binney, Breckinridge, Dana, Jay, Kent, Hayne, Holmes, Randolph (not the Roanoake man), Story, Sedgwick, Sullivan, Van Buren, and a few more.

The Hoffman line ended with the second Ogden Hoffman, the great California judge, who died wifeless and childless.

The later was born in New York City, October 16, 1822. Graduating from Columbia College at the age of nineteen, he commenced the study of law at Dane Law School, Harvard, under Judge Story and Simon Greenleaf.

After being admitted to practice, and before commencing business, he traveled in Europe, spending most of his time in Paris, where he acquired a good knowledge of the French tongue. He also learned something of other modern languages, and was already accomplished in Greek and Latin. After nearly two years' absence he returned and commenced law practice in New York City. Like Hall McAllister, he did not feel the spur of want, and like him, he had the timely counsel and encouragement of a father who had achieved success in the profession of his choice, and who had worked out for him the heritage of a distinguished name. After a brief period in New York he removed to San Francisco, arriving May 16, 1850, and entered on the practice. He had not obtained much business nor had time to do so, when he was appointed to the bench. It will never be known what figure he would have made at the bar. He evidently would have been true to his father's fame in facility of expression, logical statement, keenness of perception and knowledge of the law; but as an orator and advocate, it is probable that he would have been wanting. He had not been here a year when—in March, 1851—President Fillmore appointed him Judge of the United States District Court for the northern district of California.

In facility of diction, the art of expression, Judge Hoffman had no peer in this State. If a trial suddenly culminated and the result was apparent, Judge Hoffman was never taken by surprise. He expressed his views promptly, fully, and with all the elegance of speech which the most patient reflection could give. His reported opinions are models of style as well as rich food for the student of law.

Upon this subject of readiness and aptness and fullness of speech, Judge Hoffman held radical views. He said it was not a gift, but comes by education. His extraordinary command of language has often been the theme of comment among the lawyers. Of course, in this nimble-witted age, he could not hope to escape facetious criticism. J. Ross Browne made him the hero of his wittiest emanations. In a social company once the Judge was complimented upon his faculty of speech, and this led to a general discussion of the subject of verbal expression, in which the Judge took an earnest part. A member of the party was Hon. W. W. Morrow, who was assistant prosecuting attorney in Judge

Hoffman's court, and who succeeded to that bench. On the occasion referred to he took the ground that if a man understands an object—knows it—he cannot fail to describe it. Issue was taken with him at once. He proceeded to illustrate:

"Describe a circle," he said to Judge Morrow. Judge Morrow described a circle—the best he could—he was only a little off, but he made a mistake. "I see you don't know what a circle is," said Judge Hoffman. "If you did, you could describe it." Judge Morrow protested that the illustration was unfair. "I know a circle when I see it," he said. "I can distinguish it from a square or a triangle, but I cannot perfectly define it." But the Judge insisted that Mr. Morrow did not know what a circle was.

Among the important causes which engaged Judge Hoffman's attention was the contest over the New Almaden quicksilver mine, near San Jose, referred to in the chapter on Randolph. This mine enriched a score of men, and its development has given employment to a little army of laborers for near half a century. The history of the trial of this great cause has been printed in five octavo volumes, comprising thirty-six hundred pages. One hundred and fifty-three pages of the fourth volume are taken up by Judge Hoffman's opinion.

In Judge Hoffman's judicial retrospect the Limantour case is the most prominent to the eye. This was, perhaps, the most extraordinary civil trial that ever occurred in this State. Limantour, a Frenchman, who had lived many years in Mexico, claimed 15,000 acres of land, covering nearly all the city of San Francisco, also the islands of the bay, and large tracts of land in the interior, one of which included the city of Stockton. His claims to the city and the islands were actually confirmed by the Land commission, and they were taken before Judge Hoffman, on appeal. The bases of the claims were two alleged grants from Governor Micheltorena, dated in 1843. These were finally shown to be forgeries. Judge Hoffman's opinion, covering sixty-one pages, is a history of this noted case, and as such will always be invested with deep interest for our citizens.

In 1862 Numa Hubert issued a volume of Judge Hoffman's opinions in land cases, as originally prepared and delivered. His later opinions are contained with those of Judges Field, Deady and Sawyer, in L. S. B. Sawyer's reports.

A lawyer rushed into the Judge's court one day, in a high state of excitement about a ship that had been libeled and was in the custody of the marshal, for some alleged violation of the federal revenue laws. He was anxious to have her released. He complained loudly of the action of the authorities, which he declared would cause serious inconvenience and damage, and said that the case was all the worse because the ship was leaking and half filled with water. He asked the Judge what ought to be done under the circumstances. The dry reply was: "If I were in your place I would bail her out."

Judge Hoffman had few familiars, but many friends. As a Judge he was a favorite with leading lawyers. His manner was quiet and grave. He treated all alike. His mind was active, his apprehension quick, and his knowledge of law deep and thorough. He caught an idea promptly, comprehended a proposition at once, even if it were complicated and involved. When a lawyer read to him he was not required to "pass up that book," that it might be further consulted. He pursued the line of duty unfalteringly throughout his long career, and the closest scrutiny shows not a stain upon his robes. Very seldom did he participate in public demonstrations, popular movements or literary entertainments. He let politics alone. The son of an eminent Whig leader, he was taught to reverence Henry Clay, and we believe the only public address he ever delivered was his oration upon the career of the great statesman, when it ended in 1852. This was a thoughtful and polished effort, which is preserved in the local newspapers of August of that year.

In a quiet way this veteran of the bench extracted a good deal of pleasure from life. A bachelor, he passed much of his time at his club, where his delightful conversation was fully appreciated. He always enjoyed good health, until he neared the final scene. His step was still light, his movements alert, and his erect figure was seen daily on the street.

He died at San Francisco, in August, 1891. He had been sick for several months, and his mind broke down some weeks before his death.

MILTON S. LATHAM.

A Governor of California for Five Days Only! It was not Death that wrested from him the executive scepter, but auspicious Fortune gave him a higher trust. With the quickstep of manly ambition, he passed from the

chair of state to the federal senate—for Fame had claimed him as her favorite.

"O, who can tell how hard it is to climb
The steep where Fame's proud temple shines afar!"

Latham mounted the height, as if aided by unseen wings, and friend and foe alike applauded as rapidly and without apparent effort he rose higher and higher.

Milton S. Latham was born in Ohio, May 23, 1827, scion of stout old American stock. His father, a Virginian, was a man of letters and high social standing. The son was graduated from Jefferson College Pennsylvania (Col. J. P. Hoge's Alma Mater) in 1846, and removed to Alabama, where, in 1848, he became clerk of the Circuit Court of Russell county. He was there admitted to the bar, and made the acquaintance of Solomon Heydenfeldt. He came to California in April, 1850, and after a short stay in San Francisco, where he was clerk of the Police Court, he commenced law practice in Sacramento. In that year he was elected district attorney, and we had occasion to thus refer to his part in that political canvass, in a notice of him at his death:

"When Latham reached Placerville on his stumping tour, among his auditors was Mrs. Robertson, wife of a prominent politician, whom she survived, a cultured lady, who, after her husband's death, owned and cultivated the finest peach orchard in the State. Mrs. Robertson was impressed with the speaker's youth, his amiable manner and persuasive speech, and said to a friend, before Latham had nearly concluded: 'His youthful face will always carry him through. People will feel like giving him a lift instead of pulling him down.'

"Not so flattering was the observation of one of Latham's auditors, when, the next night, the rustic wisdom of another camp assembled to hear the young orator. Amid the smooth and steady flow of Latham's periods, a tall Whig giant, in hickory shirt and flop hat, elbowed his way to the front, and, after surveying the speaker a moment, with open mouth and the most comical countenance, suddenly drawled out, 'Gas.'

"It cut me off below the knees," said Latham, in speaking of the interruption."

On July 1, 1851, he resigned this office to stump the State as a candidate for the lower house of congress, and Thomas Sunderland, his law partner succeeded him as district attorney. He drew large audiences in that campaign. His voice was soft, his style chaste, a little florid, deliberate, persuasive, and almost womanly in grace. His election resulted, and the death of Vice-President-elect King, to whom Latham had become attached in Alabama, supplied a melancholy theme for the young member's maiden address in congress.

He was re-elected to the house, and in 1856 was appointed by President Pierce collector of customs at San Francisco, and served as such until the summer of '57, passing from that office at the age of 30.

On March 15, 1858, Latham, who was an even-tempered man, while trying a murder case before Judge Hager at San Francisco, became so incensed at a ruling made by the court, that he abruptly abandoned the case. He, however, returned to the trial on the same day.

Latham was elected Governor of California in the fall of 1859, as the regular administration Democratic candidate. His competitors were Leland Stanford, Republican, and John Currey, Douglas Democrat. In round figures, the popular vote was: Latham, 60,000; Currey, 30,000; Stanford, 10,000. (All three of these men were pets of fortune, but all three couldn't have the same office at the same time. Currey indeed never won it, but became chief justice.)

As an illustration of Latham's magnetic, winning way, Jerry Dayton told us nearly forty years ago, in Virginia City, Nevada, that while the hot contention for the gubernatorial nomination was going on in the summer of '59, Latham tapped him on the shoulder in Sacramento and said with bland smile and soft tones, "I want you to help me all you can, Jerry." Jerry promised, although he had just been the Know Nothing county clerk, and was rapidly drifting to the new Republican haven. Latham did not complain of anybody and betrayed no suspicion of anybody. The man he defeated for the Democratic nomination was the then Governor of the State, backed by great patronage and powerful prestige—John B. Weller. The convention was a large body, representative, enthusiastic, tumultuous. The Latham candidate for temporary chairman was chosen by a few votes over the Weller exponent. The latter, an eloquent senator, had a ringing partisan speech ready, but fate for that moment sealed his mouth. He delivered it, however, later in the proceedings, after the ticket was complete and the love-feast was spread. Hear him now—(alluding to Seward, John Brown and the formidable front of the new political foe): "Our enemies are marshaling by black battalions around their Satanic leader, whose brutal

theory of an irrepressible conflict has already been consummated in treason and murder." And so he went on in swelling periods. (This was Kirkpatrick of Sierra.)

It was an exciting scene when Latham was nominated by the great convention. It looms upon memory's canvas now. The result of the ballot having been declared by the chairman, a delegate away down on the right near the door called for three cheers for the nominee. Another on the left and near the platform, in louder tones, repeated: "Three cheers for the nominee!" The chairman echoed the electric words and waved command to the standing host—and three cheers were given, and no mistake.

At this climax the hero of the hour was seen pressing his way up the left aisle. He was in the city of his home, and the house of his friends. The nomination just made was equivalent to an election, and he was to be Governor of California at the age of thirty-two. The handsome person, the gentle eyes, the modest but manly bearing, the neat attire, mated to the blond features, the soft felt hat in hand, the flushed countenance bespeaking melting emotion, the extended arms which checked his progress, and the long thunder-roll and earthquake of acclaim—make up a picture rarely paralleled in political bodies. Involuntarily we looked around for Ferguson and Hawks! They were not there. They had passed away. If yet on earth they had been (like Baker, not yet fallen) leaders in other camps, but how generously would they have given their personal plaudits to their old political friend! How high *they*, too, had aimed magnetic arrows! Spirits aflame, quenched all too soon! Burning for human glory, electric in speech and action, great captains in the battle of party, all-conquering in debate! But were ye not looking on? Or were ye with immortal "Ruperts of debate," at intellectual war?

Latham became Governor. His record as such is compassed, as before stated, in five days. His inauguration occurred on the 9th day of January, 1860, the oath being administered by Hon. Stephen J. Field, then chief justice of the State Supreme Court. His address on the occasion occupied a half hour in delivery. He declared that it was only in deference to examples of revered authority that he foreshadowed his line of policy. He thought it were better to point backward at the end than forward at the beginning. The State debt then amounted to $3,885,000. While this was small in proportion to our resources, it was not justified, there being no public building, and but one charitable institution, the Stockton Asylum. The receipts of government should always equal, and, if possible, exceed its expenditures. This rule should be stern and inflexible. He urged the prompt commencement of a State Capitol building, in accordance with plans that should not be changed. The lessee system of governing the State prison was, in his opinion, destructive of the very object of incarceration—punishment and reform—and was inhuman. He thought there was little reason for executive clemency, and declared that he would not respond to recommendations for pardon signed even by judges and juries and accompanied by tearful prayers of heart-broken relatives, unless he was satisfied that the court and jury would have done differently on the state of facts shown to him. This would be his course because experience showed that those communities were freest from crime where crime was most certainly punished.

The Governor in his inaugural gave great gratification to the people of San Francisco by anticipating the Bulkhead bill, and raising a note of warning against giving the control of the city front to a monopoly. He also thought the city should not do the work, as it might be opening an overflowing fountain of political corruption and ultimate bankruptcy. It was not then time for any action, and if the bulkhead was ever built, he thought it should be by the State.

The suggestions of this inaugural address have generally found vindication in legislative expression.

He found time in his short incumbency to send to President Buchanan probably the most elaborate paper that ever proceeded to the general government from a California Governor. It was on the subject, every now and then agitated, of a division of this State. The legislature, at the last preceding session, had passed an act to take the sense of the people of the six most southern counties on the question of separation, and consenting to such separation if those counties gave a two-thirds vote therefor. *Those counties so voted,* and in compliance with law, Governor Latham forwarded to the President a statement of the result. He accompanied this with the paper referred to, wherein he examined the question as a lawyer and as a student of the Federal Constitution. He said he had no doubt the people of the State at large were against division, and they being the judges the mea-

sure must be deemed impolitic, but that the legal and constitutional aspect of the measure was of the first importance.

His views are very strikingly presented. Can a state be remitted to a territorial condition? If so, the legislature and congress can dissolve the Union! But remitting a reasonable portion of a state to a territorial condition is a very different thing; in time a new state would be developed. He clearly anticipated by some years the case of Virginia, and concluded that a state could be divided, and a new state formed, and, as the greater include the less, a territory could be formed out of a part of a state. He further argued that the act of the California legislature consenting to the division was valid, although never submitted to a vote of the people, and that the Federal Constitution (Article 4, Section 3) contains all the requirements for a division of a state.

Directly after the close of the extraordinary campaign which resulted in Latham's election as Governor, David C. Broderick, United States senator fell, "tangled in the meshes of the Code of Honor." The crestfallen friends of John B. Weller (whom Latham had defeated in convention) looked with fresh hope to his probable return to the United States senate. But Latham again triumphed over him, and took Broderick's seat in that august body. The new Governor, two days after his inauguration, was elected in joint convention of the legislature, United States senator for the unexpired term of three years. The vote stood, Latham, 97; Edmund Randolph (Douglas Democrat), 14; Oscar L. Shafter (Republican), 3. The Governor resigned three days later and proceeded to Washington.

Right after the completion of his term as senator, Latham went to London and enlisted capital in the establishment of a new bank in San Francisco. Of this, the London and San Francisco Bank, he was the president from its foundation in 1864 until 1879. He then went into railroad enterprises, and lost his fortune. He died in New York City on the 4th of March, 1882, aged 55. A few years before his death a sale of his oil paintings in that city brought $101,315.

Latham was systematic and diligent in business. When he lived in Sacramento, his will was made, with Judge A. C. Monson and John B. Harmon as executors. All his affairs were summed up on two pages and his accounts were straightened and books balanced daily. He was twice married, his second wife surviving him with several children. The mausoleum of his first wife, and the exquisite female figure in white marble, forever looking at the solemn sea, are the chief objects of mournful beauty in Lone Mountain cemetery.

LEVI PARSONS.

Levi Parsons died in New York on the 23d of October, 1887, at the age of sixty-five years. The eastern journals credited him with having been "one of the pioneer judges of the Supreme Court of California." The fact is, Parsons was never on our Supreme bench, nor did his ambition look that way. He was a lawyer, but attained no distinction as such. He was a district judge under the old system and in a brief tenure of the office attained distinction of an interesting and peculiar kind. He was a California pioneer, and when the first legislature in joint convention, March 30th, 1850, elected the first district judges, Parsons, at the age of twenty-eight, was chosen for the fourth, or San Francisco district. He received twenty-six votes against nineteen cast for Alexander Campbell, the veteran still living at Los Angeles. The legislators of that session who have since won celebrity voted for Campbell, namely, Broderick, McKinstry, De la Guerra, Randolph and Bigler.

At the opening of the March term of his court, in 1851, Judge Parsons delivered a charge to the grand jury, in which, among other things, he said that, while the liberty of the press was essential to the safety of free and popular institutions, yet, when that liberty degenerated into licentiousness, when it was prostituted to baneful purposes, so as to either disturb the public tranquillity or to slander or libel individual character, the grand jury ought to interfere.

The San Francisco Herald, in its issue of the following morning, contained an editorial under the title, "The Press a Nuisance," in which it referred to the queer things of the Judge's charge, and said that, "according to the report of the Judge, the papers of the town constitute a nuisance and should be prosecuted as such by the county authorities." The article went on to speak of the "judicial madness" of the time, and declared that "our courts cover crime with the folds of the ermine; they lift their impotent arms to scourge an unfettered press with rods of justice, as they style it. They drop the tears of a bastard mercy upon the robbers and the assassins who

threaten our lives and our property; they turn with a scowl of wrath and an arm of vengeance upon the press which dares to complain of the tenderness with which offenders are treated.

"If we err not, Judge Parsons was present in many of the scenes which passed before the City Hall some ten days ago. He may have observed the deep discontent with which the people listened to him when he counseled them to leave the prisoners, Stuart and Wildred, to the legal courts of the State. He may have heard the curses, not suppressed even by his presence, uttered against the courts as now organized and constituted. If the Judge could hardly stand before the people when he appeared merely as counsel for the parties summarily arraigned before the people in mass assembled, how much weaker would he be if called upon to plead his own cause before an outraged and indignant public? If we were the guardian angel of the District Judge we would whisper in his ear, 'Beware!'"

On the opening of the court the same morning, Judge Parsons made an order on John Nugent and William Walker, the last-named the famous filibuster of later times, editors and proprietors of the Herald, to show cause why they should not be punished for contempt. Walker appeared and was heard, through his counsel, Edmund Randolph and C. T. Botts, on a motion to discharge the order. The district attorney, Delos Lake, replied in support of the order. The Judge filed a written opinion of some length, overruling the motion to discharge the order. Walker then answered in writing, that he was the author of the obnoxious editorial and wrote it to promote justice, and he believed the facts stated therein were true, and the reference correct. Judge Parsons remarked from the bench that "this indelicate and impudent answer puts the matter beyond question as to the intent of the defendant," and that "the publication was a gross libel on the court." He fined Walker $500, and ordered him committed until the fine was paid.

The legislature was then in session at San Jose, and Walker memorialized it for the impeachment of Judge Parsons for gross tyranny and oppression. A special committee of the assembly reported that the Judge should be impeached. The assembly did not adopt this report, but referred the matter to another committee. This committee made a very exhaustive examination, and two elaborately written reports, the majority concluding that there was no cause for impeachment, and the charges against Judge Parsons were dismissed on motion of Hon. Stephen J. Field.

This early chapter in the California career of Levi Parsons faded to a shadow beside the history of his connection with the famous Bulkhead bill. The gigantic scheme was chiefly inspired by him, and his would have been the greater part of the wealth and political power which must have resulted from the enactment of the measure. It was before the legislature at several sessions. Finally, at the session of 1860, it passed both branches of the legislature against the overwhelming protest of San Francisco, which it chiefly concerned. The bill proposed to give "to the San Francisco Dock and Wharf Company (composed of Levi Parsons, Dr. H. S. Gates, J. Mora Moss, John Nightingale, Abel Guy, John B. Felton and John Crane) the right to build a bulkhead or seawall, with the necessary piers, wharves and docks, upon the water line of 1851, with the right to collect dockage, wharfage and tolls, also to construct wharves and piers projecting at right angles from the seawall to a length of 600 feet."

Governor Downey vetoed and so killed this bill. His veto message which admirably reflected the sentiment of this people, declared that if the bill should become a law, "all commercial intercourse with San Francisco would be effectually cut off, or be carried on upon such terms as the Dock and Wharf Company might dictate." There was a great demonstration of the people of San Francisco, en masse, in honor of Governor Downey, at his next visit to that city.

Judge Parsons once had a controversy with Chief Justice Murray, and published a philippic against him. The authorship was attributed by many to Delos Lake.

The Judge was educated at Union College, New York. He possessed a vigorous mind and had many good qualities of head and heart. As sponsor of the Bulkhead bill (always styled the "Parsons Bulkhead bill), he became the *bete noire* of the community. He always had large means, and his home for a long time was on California street, nearly opposite Grace church, San Francisco. He removed from the State permanently in 1866, and lived quietly in New York city. Three years before this, we conversed with him for the last time, in Virginia City, Nevada. He was inspecting the new mines with a view to investment.

His beneficence was far greater than was generally known, among his gifts to different institutions being one of $50,000 to Union College. He also endowed the Parsons Library at Gloversville, N. Y. Among the intimate acquaintances of his early years was the Duke of Wellington, and he was well known in European capitals, having crossed the Atlantic forty-two times.

E. W. F. SLOAN.

Edward W. F. Sloan was a venerated leader of the San Francisco bar for fifteen years. Like Heydenfeldt, Holmes and Pringle, and other first class legal minds that dignified the profession in this State, he was a native of South Carolina. He had adorned the bench there. He came to California, a highly educated man and an experienced lawyer, in 1851. Settling at San Francisco, he practiced alone for the greater part of his period there, but had an association in 1859-60 with S. M. Bowman, at another time with Wm. H. Rhodes ("Caxton"), and, at his death, he had been in partnership for a few years with R. R. Provines. He died of pneumonia, at the age of 55 years, on August 25, 1866. His high character and standing were strongly and beautifully set forth in the memorial proceedings in the Supreme Court, at its next term, October 1, 1866. At the opening of the Court, J. G. McCullough, attorney-general, addressed the Court as follows:

"May it please the Court: Since our last meeting, E. W. F. Sloan has been summoned from this bar by death, and I invite your honors to pay fitting homage to his memory. It seems strange and sad not to see the familiar form and meet the quiet smile of one who was so long a regular attendant at the sessions of this Court. There is no other to fill the aching void. For, what one of his brothers in this State would hesitate to award to him the possession of a rare and happy combination of moral and mental qualities united in no other? And what higher tribute than this could be paid to the real worth of the deceased? Gifted with an intellect of the first order, he had trained it in the school of a severe discipline, and enriched it with an untiring culture. He was a lawyer of most profound research and of the loftiest attainments, and in our profession was almost or altogether *facile princeps*. With a mind that was ever aiming after the truth and employing a logic that was wonderfully simple and searching, his inquiry always was, not so much what is the law, but why is it so? With the nicest sense of honor, studiously true to court and client and opposing counsel, of incorruptible integrity, he was a bright ornament in the foremost ranks of the legal profession. As a general scholar he had devoted himself as his labor would permit to literature, the arts and the sciences, and had gathered learning and garnered gems from every department. As a citizen he religiously fulfilled his every duty cheerfully. As a man, his kindly heart, his genial manners, his uniform courtesy, his unostentatious bearing, his retiring habits, his native modesty, his simple sublimity of character, won bench and bar, lawyer and layman, and challenged the admiration of all.

"But he is gone, and I but respect his unaffected dislike of all parade by being brief on this occasion. A great lawyer, a good citizen, an honest man, a pure Christian, has died. This is his greatest praise, as this was the involuntary tribute of all who knew him when his death was announced. Be it ours to imitate his example! By request of the members of the San Francisco bar, I move your Honors that the resolutions adopted at a meeting thereof, and which I now present, may be entered upon the minutes of the Court, in honor of the lamented deceased."

The resolutions of the bar meeting were as follows:

"Whereas, It has pleased Divine Providence to remove by death our friend and brother, E. W. F. Sloan, we, the members of the bar, assembled for the purpose of paying a tribute to his merit as a lawyer, and expressing our sorrow at his loss, do adopt the following resolutions:

"*Resolved*, That, in the death of our brother, the profession has lost one of its ablest and most learned members, one who through a career coeval with the existence of the State, was always distinguished for intellectual attainments of the highest order, for unswerving integrity, and for uniform kindness and courtesy in all his intercourse with his brethren of the bar.

"*Resolved*, That while we deplore the loss of this ornament to his profession, we take occasion to recall to mind for imitation his studious habits, his unaffected, genial manners, his qualities of untiring industry and courtesy of deportment, his delicate sense of honor, and his profound yet varied learning.

"*Resolved*, That while he possessed a public reputation and displayed a legal ability which placed him in the foremost rank of the profession, he uniformly manifested in all the private walks of life an unostentatious simplicity of character which endeared him to his friends and commanded universal admiration and respect."

After the remarks of the attorney-general, and the reading of the resolutions, the Chief Justice, Hon. John Currey, made the following response: "The members of this Court cordially unite with the bar in commemorating the excellence and worth of our departed brother. At the time of his death, Judge Sloan had been a resident and citizen of the State for more than fifteen years. Soon after his arrival on these shores his ability and character as a lawyer became known, and he at once took his place in the front rank of the profession, and maintained that position with honor

to the end of his career. He was a man gifted by nature with more than ordinary capacity. His mind was early improved by a liberal education. He was known to those most intimate with him as possessing high attainments in the departments of natural philosophy, history, and the exact sciences. His learning in common law science was perhaps superior to that of any other man within the State, and no one among us better understood than he the doctrines and principles of equity jurisprudence. With all his ability and learning he was, in his intercourse with his fellowmen, uniformly modest and unpretending. There was nothing offensively aggressive in his nature. As an advocate he won his way by the force of his reasoning and the truths which he uttered. In the statement of legal propositions, he always aimed to be true to the letter and spirit, and, in relation to facts, he was never known to any of us to deviate from a scrupulous exactness. He was a man of integrity, honest with himself and with all men. Since the organization of this Court no term of it has passed which he has not attended. He was employed in many of the most important cases that have, during the incumbency of the present bench, been submitted to and passed upon by it, and how well he acquitted himself, his arguments reported in the volumes of decisions will bear testimony. He had the respect and confidence of the Courts and of his professional brethren throughout the land, as also of all good men who enjoyed his acquaintance. It is due to ourselves and to those who may fill the ranks of the profession hereafter, that his name should be preserved in respectful and affectionate remembrance; and, as a permanent testimonial to that end, the proceedings this day had will be entered upon the records of the Court."

—*THE EDITOR.*

VETERANS SURVIVING

IN 1900

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JOHN CURREY.

John Currey was a justice of the Supreme Court of California from the first day of January, 1864, for the term of four years, and for the last two years thereof was the chief justice of that court.

For more than twenty years we have enjoyed a friendly acquaintance with him, and during that time have incidentally learned from him much of himself and his family history. In a conversation with him some time ago respecting this new history of legal and judicial matters covering the period of the last fifty years in this State, we told him it was our intention to write our personal sketches of some of those who had been prominent as lawyers, and in some cases, judges, during this period, and among them a sketch of his own life and career. To this he answered that there had already appeared in our book of sketches of "Bench and Bar," published some years ago, a notice of himself. He seemed to think there was no good reason for writing him up again, saying that more of commonplace matter had been written about him and printed in the newspapers and periodicals of the day, than was altogether agreeable. We told him we could not relinquish our purpose of writing a sketch of him as a pioneer who had been from the beginning a part of the legal and judicial history of this State, and we further said that in sketches of the kind which we proposed to write, it was usual to say something of family history. To this he replied that the sketches which he had read were generally unnecessarily prolix and minute in the detail of facts and circumstances of no particular interest to the general reader; and he then said if it was our fixed purpose to write of him again, he would request that we say no more of family history or of his anabasis from his beginning on through life to the present time of his advanced age than we might deem necessary for the purpose of our sketch. To this we readily agreed, and here follows the narrative as it came from him:

John Currey's ancestors on the father's side were the Curreys, the Moores, and the Channings; on the mother's side, the Wards, the Fowlers, and the Drakes. One of these families was Scotch, the others English. The emigrant of each family came to America as early as 1680. Of his ancestral generations, lineal and collateral, who lived in the time of the War of the American Revolution, some were on one side of the absorbing question of that day, and some were on the other. He says that so far as he knows their history, they were a brave and law-abiding people. There were no criminals or idiots or insane persons among them. His father was esteemed by all who knew him as a man of intellectual force and sound judgment, and of unswerving integrity in his dealings with men. His mother was a woman of an affectionate and benevolent nature; always kind to the destitute poor, and to all in trouble. She possessed a remarkable memory of persons and things of her earlier life. Of the stirring incidents of the war her mind was a storehouse of traditions. Both were born during the period of the war, in Cortland Township, Westchester county, New York, near the village of Peekskill, in that township, and within

about ten miles of West Point, which is in the midst of the Highlands of the Hudson river. All of that country was throughout the war-time of those years one of the centers of cruel war disturbances.

From a small beginning as a farmer his father, in the course of years, acquired large real estate possessions.

On their farm there his parents lived their long lives, each to the age of nearly ninety years. There Judge Currey was born, in October, 1814, being the youngest and now the only survivor of a large family of children, all of whom were persons of exemplary lives. There he grew to manhood, blessed with a vigorous constitution, inherited from his parents. There he performed his share of the labors on the farm, until he left home and passed through several academies and entered college, where he remained until he acquired a sufficient amount of classical learning to entitle him to a reduction of four years from the term of seven years required of a student in a law office before he became entitled to admission to the bar as an attorney at law and solicitor in chancery.

In September, 1839, he became a bar student under the tutorship of the Hon. William Nelson, an eminent lawyer, who resided at Peekskill. With him he remained three years, and then, upon an examination, was admitted to the bar. After three years of practice as attorney and solicitor, he was again examined and passed to the degree of counsellor, which entitled him to appear in the highest courts of the state in the argument of causes on appeal. After nearly seven years of successful practice, a part of the time at Peekskill and a part of the time in the larger field of Kingston, in Ulster county, he resolved to migrate to California, and thereupon, on the last day of June, 1849, he started on his voyage via the Isthmus of Panama, and reached San Francisco on the 18th of August, of that year.

After a visit to the gold diggings, he returned to San Francisco, and in December opened a law office and practiced his profession until in February, 1851, when he visited his old home and friends in New York. His visit there being over, he returned, bringing with him his good wife and little son, their first born, arriving at San Francisco in the latter part of June, to find the city destroyed by the two great fires of May and June of that year. This condition of things determined him to remove to the country, where he had done some professional business before. They made Benicia their residence. That place was then the headquarters of the United States Army on the Pacific, and the depot for the ships of the Pacific Mail Steamship Company. It was the county seat of Solano county, one of the counties of the Seventh Judicial District, which comprised within its limits the present counties of Contra Costa, Solano, Napa, Lake, Marin, Sonoma and Mendocino, a field of vast resources and enterprise. He soon obtained a large practice, which so increased in volume as to require about all he could do to properly manage and dispose of it. His business was general in its scope. Land litigations were the most important, and continued for eight years or more before the Spanish and Mexican land titles were settled under the act of congress of March, 1851, relating thereto.

He says his country practice, laborious as it was, was agreeable and pleasant. The stated terms of court, friendly bar, and an able and learned judge, who held the scales of justice even, as Judge McKinstry did, and juries composed of intelligent, patient and honest men—all contributed to make the practice of the law pleasant in those days.

During the years of his country practice, from the beginning, until 1864, he did a large business in the Supreme Court. This period covered the time when, among others, Justices Murray, Heydenfeldt, Field and Baldwin, were on the bench.

In 1861 he removed to San Francisco, where, and at the same time in the country, he tried many cases, some of much importance.

In 1863 he was elected a justice of the Supreme Court. His work as a member of that court is a matter of record which speaks for itself. After his retirement from the bench he practiced law for about eight years, pleasantly associated with Oliver P. Evans. During this period he became partially blind by reason of an acute inflammation of his eyes, which rendered it necessary for him to retire from the active business of a professional life, greatly to his disappointment.

Of the children of his household there were four, three of whom grew up to and beyond the age of legal majority. Each of these received a liberal education. One of his sons graduated at Williams College, the other at Yale, and the daughter at a high school in New York City. Three of his four children, and their kind and devoted mother, have

gone on from earth. One only remains, his son, Robert J. Currey, the solace and comfort of his declining life.

We have closed the narrative, and now, without attempting an elaborate delineation of his character as a lawyer or otherwise, it may be said the qualities and attributes that most distinguished him in his active life were the soundness of his judgment and logical reasoning powers, his tenacious memory, his integrity of purpose and steady loyalty to principle and right, according to the impetus of conscience. So long as there was anything to do in the examination and preparation of a case for trial or argument, his industry was untiring, the consequence of which was that he was always ready for the fray. In the presentation of his case to court or jury he was earnest and direct, and lost no time.

Aside from his study and the practice of the law, he found time to devote to the reading of history, biography, essays, poetry and the current literature of the day. Sound health, regular habits and a patient industry enabled him to give a portion of his time to other things than jurisprudence, which was the absorbing study of his entire professional life.

In his intercourse with his friends and acquaintances of the bar and others, he was cordial and buoyant in spirit, enjoying with them the recitals of the ludicrous and ridiculous incidents of California life, as well as indulging in the discussion of business interests or political and governmental affairs. Those were the young days of California, and the people were then young and active, cheerful and hopeful.

In politics Judge Currey was a Whig, and so continued as long as there was a Whig party. For a time he was without a party. He was always an anti-slavery man in conscience, but not an abolitionist in any party sense. He was opposed to the extension of the institution of slavery, and when the slave propagandists of Kansas and elsewhere undertook, in 1857 and 1858, to make slavery an institution of Kansas against the will of a majority of the people of that territory, he joined the party led by Senator Broderick, in opposition to the pro-slavery element in this State, which was giving its moral and political support, as far as it could be done by them, for the permanent establishment of slavery in Kansas. At that date nearly two-thirds of the voters in this State favored the slavery side of the question in Kansas, which was disturbing the whole country from center to circumference. In 1858, and also in 1859, his name was placed at the head of the ticket of this newly constructed anti-slavery extension party or Free-state party. But in the election of that year, though he polled the full strength of his party, and even more, he suffered the fate of minority parties everywhere. Beaten, but not conquered, his party retired for the time, with their flag flying and their arms at their side. Judge Currey claims that the effect of these campaigns of the party to which he belonged, saved the State from seceding in 1861. He says this is the logic of the then existing condition of affairs, which he believes will be recognized in history yet to be written.

In 1870, after his retirement from public life, Williams College conferred on him the honorary degree of Doctor of Laws, and in 1897, while in New York, he became a member of the Empire State Society of the Sons of the American Revolution.

In passing to the close of this sketch it is proper to say that Judge Currey never had any inclination for gambling, and never knew a gambling card game. He says he never used profane language on any occasion or under any provocation; that the command, "Thou shalt not take the name of the Lord, thy God, in vain," was always before him.

Now, in the evening of life, he still finds occupation in pursuits of law and literary studies, and in governmental and political affairs, as also in the cultivation and improvement of his farm, for which he believes he has an inherited taste and inclination.

There has always dwelt a good deal of humor and poetry in his soul. He is a man of quiet tastes and bearing, but never sequesters himself. He is approachable, not impulsive nor magnetic. His strong side is judgment, yet by appeals to his heart he has been imposed upon time and again, and he has declared to us that he never expects to be able to overcome this weakness, as he calls it. He is really a magnanimous man and a firm friend.

Judge Currey's delight is the society of thoughtful men—men of moral and intellectual worth. He is a philosopher of the Emerson school. From what has been said of his memory and other attributes, it can be readily seen that there is much of entertainment and instruction in his conversation.

ANNIS MERRILL.

In the summer of 1900 we ventured to refer to this gentleman as the patriarch of the California bar. But he declined the compliment in favor of Judge John Currey, and a few others. His professional life has not been so lengthy or so active, or so conspicuous, as those of Judge Currey and some others, chiefly because he was himself pleased to end it so very long ago.

He was born in 1810, on the 9th of September (Admission Day!), and at the age of ninety, he is still light of foot and heart—and safe in counsel, too; for, even professionally, he is not secluded; there are men of substance who seek him in his home, and take his sage advice.

We met him first in 1866. It was in the office of Eugene Casserly, at San Francisco. He was even then practically retired, but had not closed his office. Mr. Casserly introduced him to an attorney who had been in the practice in that city for some years, and who inquired what was Mr. Merrill's line of business. The well-read Casserly answered before Mr. Merrill could speak, "He is a lawyer, and has been in full practice here, and in Boston before he came here. You will find his name scattered over the Massachusetts Reports."

"Before leaving Boston," he said to us, "I enjoyed a fine practice for some years. I gave this up and went away because of the northeast winds, which were very injurious to my health.

Over thirty years after this first meeting, in a talk which we had with him, the old bar leader, so long hidden from the professional eye, became reminiscent.

"I was a professor of Latin and Greek for six years, 1836 to 1842, in McKendree College, St. Clair county, Illinois. After my resignation I received from the college the degree of LL. D.

"I arrived in San Francisco in 1849, and began the practice of law in the same year. I cleared twenty thousand dollars the first year I was here. My offices at that time comprised two little rooms in the City Hotel, at the southwest corner of Clay and Kearny streets. My rent was $275 a month, payable in advance.

"Lloyd Tevis told me once that he went to London to try to sell the Ontario gold mine, located in Utah; that he used all his arts in trying to sell it, but in vain; that he and Haggin then went to work and developed the mine, and it had since yielded eight mill of dollars in dividends; he had offered i London for two hundred thousand dollars.

"About three years after Haggin and T had removed to San Francisco from Sa mento, Tevis said to me that he brought him from Sacramento $130,000 in coin, n in money-lending there, and that this had brought him in three per cent per m for the three years he had been in San F cisco.

"William Sharon was misunderstood misrepresented. He hated a liar, and was self one of the most truthful of men. He his desk before he entered the board of bro in my law office. I was his adviser, an used to bring his customers to me to re advice. In the palmy days of the Belcher located at Gold Hill, Nevada, he told m San Francisco that the stock was goin in value, and advised me to purchase. I 'Buy me $10,000 worth, Mr. Sharon.' H so. About three years afterwards he ad me to sell. I said, 'Sell mine for me, Sharon.' He sold. I made a good profit fore he sold his own stock he receive dividends from the Belcher mine five hun thousand dollars a month for a year a half or more. When he told me thi said that he was at the same time rece sixty-three thousand dollars a month fro Virginia City & Truckee Railroad. 'A built that road,' said Mr. Sharon, 'witho costing me a dollar.' The counties th which the road ran had given subsidies. recollect rightly, bonds had been issue the company, and Sharon held or sol bonds. He also told me that he then had trol of twenty-five millions of dollars.

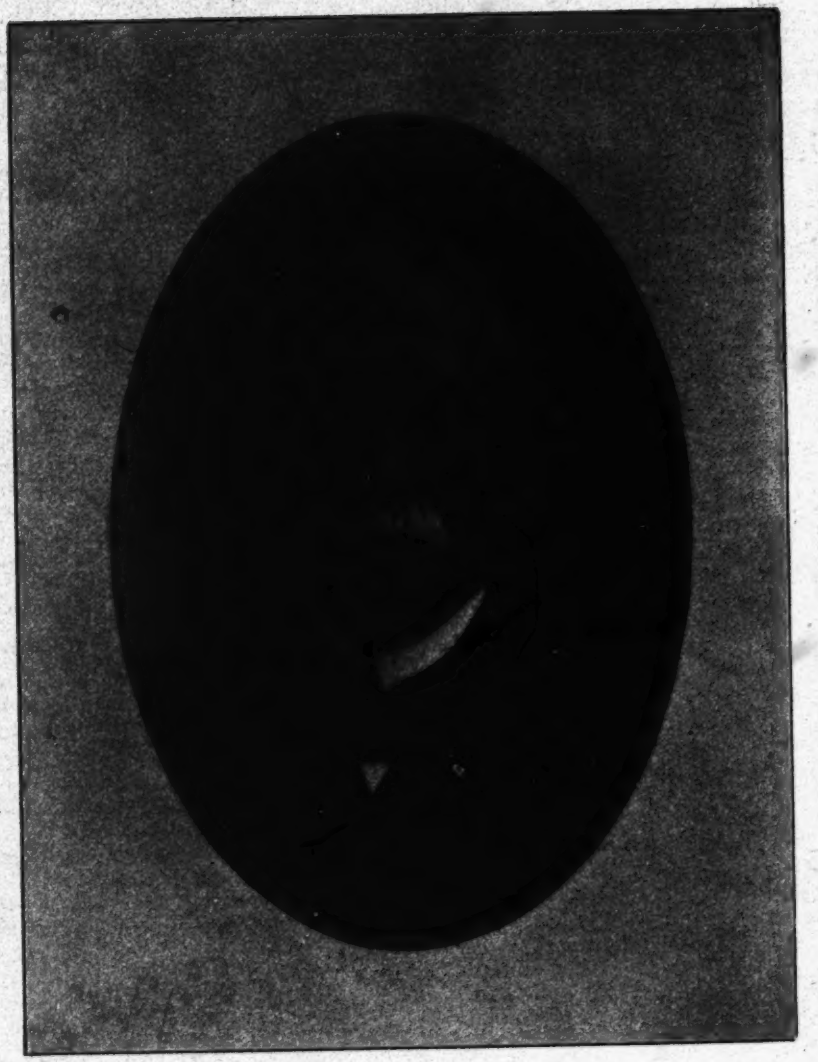
"A few years later he said he had met losses, and was then worth fifteen millio

"Many people have believed that S owed his rise to William C. Ralston Ralston made Sharon).

"Ralston did *not* make Sharon. Both self-made men. I knew their relations t other.

"Long before he became so rich, S informed me one day that he had lost had. I held his note at that time for thousand dollars, indorsed by J. D. F was paid at maturity.

"To revert to the agency at Virginia When a loud complaint was made by the holders of the Bank of California in San cisco, that the bank was speculating



Annis Merrill

Virginia City mines, the bank stopped such operations there, and Sharon individually took the mines. He told me that he had a written report of the condition of every mine there and in Gold Hill laid on his table every afternoon at five o'clock."

Mr. Merrill was born at Harwich, Massachusetts. When a child, he did not live long in any one locality, his father, Joseph Annis Merrill, being an itinerant Methodist clergyman. He was better informed as to his birthplace, however, than was that other child, a little girl of like parentage, who, on being asked where she was born, answered, "I was not born anywhere in particular; my father was a Methodist minister."

Rev. J. A. Merrill entered the ministry at the age of eighteen, and followed it faithfully for fifty years, until his death in 1849. He was devoted to the cause of education, and was one of the founders of Wilbraham Academy, the first institution of learning successfully established by his denomination in America. We have read that he was a "powerful preacher and a critical scholar," and that he was chaplain in the celebrated fighting regiment of Colonel Binney in the War of 1812. His father had been a soldier in the American army throughout the Revolutionary War, and witnessed the surrender of Cornwallis at Yorktown. The Merrills trace their ancestors to England, and more remotely to the Huguenots of France.

Annis Merrill's mother was Hannah Jewett, the daughter of a Baptist minister of Canadian-English descent. She has been represented as "devotedly religious, well educated, poetic in temperament, and lovely in person as well as in spirit."

Mr. Merrill after some years at the common school, entered, at the age of ten, Newmarket Academy. Between the ages of twelve and fourteen he worked in a tannery at Wilbraham, Massachusetts. He worked at various laborious callings for some years more, and taught school in winter. In his twenty-first year he entered Wesleyan University and completed the four years' course. He began the study of law, and removed to Louisville, Ky., where he received a call from McKendree college, at Lebanon, Illinois, to the professorship of Latin and Greek. He accepted, and devoted seven years to the duties of that position, teaching also political economy. He gave his spare time to reading law. He was admitted to the bar of Illinois Supreme Court in 1843, and, resigning his professorship, he began the practice of law at Belleville in that state. A year later he went back to Boston, and formed with his brother the law firm of A. & A. B. Merrill. His biographer, in Bancroft's "Chronicles of the Builders," says:

"The most conspicuous incident of his practice in Boston was his connection with Rufus Choate in the celebrated case of the Commonwealth of Massachusetts versus Albert Tirrel, his client, tried first for murder and afterward for arson, and acquitted on both charges. The defense set up was that if the accused committed the deed he was in a somnambulistic state at the time of the act, and therefore not morally or legally responsible. The plea was a novel one, never offered before, perhaps, nor since, and extraordinary ingenuity was required to maintain and establish it. Mr. Choate's argument was, of course, masterly, while he is reported to have remarked to his associate counsel, Mr. Merrill, whose argument, reported in substance in the Boston press, evinced great legal ability, and profound study of the science of human pathology: "Publish this case, and it will immortalize you."

Mr. Merrill arrived in California on the 18th of August, 1849. It will certainly interest the profession if we again quote his biographer, who had evidently studied the mature lawyer and enjoyed his conversation:

"He had enjoyed the benefit of a home favorable to the formation of character; he had availed himself of his opportunities to acquire the rudiments of English; in the school of manual labor he had obtained a sure means of support; the privilege of liberal culture, the result of his own toil, he had appreciated and utilized; after seven years' experience as an educator of young men, he had entered mind and soul into a profession held in esteem by many good men. His habit was, like Webster, first to reason out a case on elementary principles of law as the foundation, and then to use authority or precedent in framing the superstructure of his argument. The reverse of this, which is so much in vogue in the practice of the present day, that is, of striving for a decision primarily upon the weight of authority, he never could consider the true or intellectual method. He attributed his success to work, for he was wont to say: 'Whatever talent the lawyer may possess, he cannot succeed eminently without thorough preparation.' He laid great stress upon integrity

in the practice; for, 'ultimately,' he said, 'the more conscientious the lawyer, the more successful he will be.' To his profession he paid this glowing tribute: 'As a class, lawyers are as honorable and conscientious as scholars or ministers of the gospel; the moral courage they exhibit at times in their loyalty to clients, at whatever cost or sacrifice, rises to the sublime.'"

On his way to this State, Mr. Merrill, on the isthmus, became acquainted with an attorney from Detroit, John McVickar. On arrival at San Francisco, the law firm of Merrill & McVickar was formed, and did a large business until Mr. McVickar's death, in 1854. Mr. Merrill practiced alone for about five years, and then had a few years' partnership with R. P. Clement and Martin White. Since this ended, about the opening of the year 1864, he practiced alone and quietly for a few years, and gradually closed up his business.

Mr. Merrill has been an active worker in the cause of temperance all his life since the age of sixteen. He believes that women should be allowed to vote, if for no other reason than they would generally vote for men who would enact and enforce temperance laws. He is not severe, hardly, on this question, but practical and charitable. It is said that his religion has always been the source of his enthusiasm in all his other works. He has been a stanch Methodist since boyhood. To the Bible he has given his best study. For more than thirty years he has been president of the California Bible Society.

"To the work of secular education," to quote once more, "he has been not less devoted, believing that knowledge acquired from profane literature is not only valuable on account of its temporal uses, but that the greater the enlightenment of the mind the clearer its comprehension of those truths which appertain to the hereafter."

We have referred to Mr. Merrill's continuing good health and his alertness of movement. It is his daily morning practice, begun some years ago, to ride on the bicycle for many miles. He has his "wheel" in keeping at the great park. About nine o'clock he goes thither by street-car and there mounts his vehicle, riding through the park to the ocean, and soon returning by the same route and in the same way to his home on Jackson street, near Mason, having traveled about four miles by car and about double that distance on "wheel."

Mr. Merrill married at Middletown, Conn., in early manhood, Miss Harriet Maria Sage. It would be taken for granted that he is a widower now. But they were one through a long stretch of time. She was a woman altogether worthy of such a man, and died in 1892, at the age of 75. There was no issue of this union.

E. W. McKINSTRY.

This eminent jurist who has filled so large a place in our history, came to California in June, 1849, and as late as 1900, just before this history was printed, the Society of California Pioneers at San Francisco made him their President. We observed of him in 1888 when his period on the Supreme bench about doubled that of any other man, that he had been the voice of the court in the adjudication of the greatest causes, those which have involved the largest pecuniary interests, and those which have enlisted the passions of the people, notable among which were the local option case of 1874, the Kearney habeas corpus of 1878, and the water rights case of 1886. And we added that by reason of length of service and enduring work, he had made a name that would probably live longest of all on the shining roll of our judiciary.

Our pioneer was in law practice at Sacramento in 1850. He was in our first legislature, representing Sacramento in the lower branch, P. B. Cornwall being one of his eight colleagues. By the next succeeding legislature he was elected adjutant-general at the age of twenty-four years.

He never entered on the duties of this office, as the legislature failed to provide a salary for the incumbent. He opened a law office in Napa, early in 1851. He was elected district judge in the fall of 1852, for the district comprising Napa and contiguous counties, and was re-elected in September, 1858. On November 13, 1862, he resigned. In 1863 he was the Democratic candidate for lieutenant-governor and was defeated, with his ticket. He went to Washoe in the flush times, and in 1864, [illegible] and John R. McConnell and W. C. Wallace (not W. T.) were the Democratic nominees for supreme justices of the state of Nevada, all being defeated. Returning to California and locating at San Francisco, he was, in October, 1867, elected by the Democracy county judge for a term of four years, from January 1, 1868. In October, 1869, he was elected judge of the Twelfth District Court, as an Independent candidate, over the regular Dem-

E. W. McKinstry

cratic nominee, R. R. Provines. In 1873, again as an Independent candidate, he was elected a justice of the Supreme Court over Samuel H. Dwinelle, Republican. On September 3, 1879, under the new constitution, which, among many other things, reorganized the Supreme Court, he was re-elected a justice of that tribunal, and under the classification by lot, which the constitution directed, he and Hon. J. D. Thornton drew the longest terms, eleven years each.

Judge McKinstry was born in Detroit, Michigan. He registered as a voter in San Francisco, in July, 1867, as being then forty-one years old.

Judge McKinstry wrote the majority opinion (4 to 3) of the State Supreme Court in the great water rights case of Lux vs. Haggin, in May, 1885; and the majority opinion of that court (also 4 to 3) on the first appeal, in the Sharon case, February 1, 1888. He resigned from the Supreme bench on October 1, 1888, to become professor of municipal law in the Hastings Law College.

Since 1890 he has been engaged in law practice. After practicing alone for some years, his son, Mr. James C. McKinstry, became his partner. In 1896 these gentlemen united with Hon. John A. Stanly and H. W. Bradley, under the style of Stanly, McKinstry, Bradley & McKinstry. Since Judge Stanly's death (September 22, 1899) the firm has been McKinstry, Bradley & McKinstry.

In the case of the People vs. Charles Fritch, where the defendant had been convicted in the San Francisco Police Court of keeping a theater open on Sunday, contrary to the statute then existing, and which case was brought on appeal before Judge McKinstry while he was county judge—that jurist, in rendering his decision, made the following remarks:

"I confess that I approach the question presented in this case with a feeling of repugnance to such legislation as that upon which this prosecution is founded. Indeed, if the constitutionality of 'Sunday laws' were a new question, I should hesitate to sustain them. Strictly speaking, no form of religion is *tolerated* in California. By the terms of the constitution, 'The free exercise and enjoyment of religious profession and worship, *without discrimination or preference*, shall forever be allowed.' It is the absolute right, therefore, of every citizen to worship God according to the dictates of his own conscience, and to keep holy such days as his own religion may sanctify; and it would be difficult to convince an 'orthodox' Jew, for example, who has abstained from secular employment on Saturday, that a law which compels him to refrain from like employment on Sunday gives no preference to other forms of religion. Certainly, all arguments based upon the supposed physical benefits derived from a stated day of rest would have little application or ground for enforcing a 'Sunday law' upon one who has taken *his* rest on the preceding day. But there are some propositions which should never be urged in an inferior court. The County Court should not be called upon to consider as doubtful a question clearly determined by the highest tribunal of the State. Were I permitted to declare as law my own crude notions or well considered opinions, I might feel authorized to decide that the constitutional provision which gives to this court jurisdiction of actions of 'forcible entry and detainer' does not empower a landlord to bring suit here against a tenant who *peacefully* holds over his term; or, that congress had no power to make the paper known as 'greenbacks' a legal tender; and the absurdity of such judgments, in the teeth of the decisions of the Supreme Court, would be sufficiently apparent.

My duty is simply to obey the adjudications of that tribunal. Were an inferior judge to substitute for these his personal convictions of what the law *ought* to be, this would be not only an act of singular audacity in itself, but would destroy the symmetry of our judicial system, and introduce confusion, delay and increased expense in the administration of justice, and bring upon his head the deserved censure of the court of last resort, whose opinion he has treated with contempt. The legislature may change the law; the Supreme Court may alter its opinion as to the proper construction to be given to the constitution or to a statute; the County Court can only follow *in good faith* the judgments of the appellate court.

Again, it is urged that as the Supreme Court in *ex parte Newman* (9 Cal.) held the law of 1858 to be unconstitutional, both that and the law of 1855 ceased to exist from the date of that decision; and it was not competent for the same court to revive them by a subsequent decision reversing the former one. This is a misapprehension of the function of judicial tribunals. Courts never repeal laws, never legislate. They are organized to try cases, and in passing upon an issue between individuals, or between the State and an individual, a court only inquires what is the law. To say that because, in a given case, the Supreme Court declared the law one way, it is forever debarred from holding the law, applicable to the same or similar facts, to be otherwise, would be to demand a degree of consistency, which a glance at the reports will show has not heretofore been deemed necessary, and might be considered an unwarrantable interference with the privileges of those who in the future may be called to preside over the paramount tribunal. The Supreme Court, in short, has always the power to reverse every previous decision, including its

own; the last judgment of the court being the law of the land."

In the case of Frederick R. Lane, indicted for the murder of Harvey Swift in a saloon on the Potrero in San Francisco, March 13, 1872, the trouble grew out of a dispute about cards. Lane was tried before Judge McKinstry and a jury in the old Twelfth District Court, and was convicted of manslaughter. He was sentenced on December 30, 1872, to a term of five and a half years in the state prison, and Judge McKinstry in passing sentence expressed his disapproval of the law which permitted persons accused of crime to testify in their own behalf, as, he said, it placed the accused in a wrong position. They feel that if they do not testify it will be construed against them, and if they do testify they are very liable to exaggerate or to commit downright perjury.

The Board of Supervisors of San Francisco in September, 1891, called for the opinion of Judge McKinstry as to the powers of the State Board of Equalization to increase the assessment-roll of the city for city purposes. Judge McKinstry filed his opinion on September 18, 1891, and held that the State Board had no power to increase the assessment-roll of San Francisco, so as to affect taxation for city and county purposes; and that the city and county officers, in their several acts leading to the collection of taxes for city and county purposes, must be guided and controlled by the assessment-roll, unaffected by any increase of the valuations therein by the State Board, for purposes of State taxation.

This opinion may be found in the San Francisco Municipal Reports for the year 1890-'91 —in the Appendix, at page 181.

Judge McKinstry was educated in Michigan, Kinderhook, N. Y., and Gambier (Kenyon College), Ohio, and was admitted to the Bar in New York in 1847. The degree of LL. D. was conferred on him by the University of Michigan.

The grandfather of the Judge, General Charles McKinstry, of Hillsdale, was an officer of the New York troops in the Revolutionary War, and his grand-uncle was a colonel in the same war. The Judge is descended through his mother from Governor Bradford, John Alden, and other passengers of the Mayflower. He is a member of the "Mayflower Descendants," of the "Colonial Governors," and of the "Society of Colonial Wars." He is an ex-President of the San Francisco branch of the "Sons of the American Revolution."

His father, Colonel David C. McKinstry, was a pioneer of Michigan, having settled in Detroit as early as 1816. He was long a distinguished citizen of the northwest. Of the sons of Colonel David C., other than the Judge, Charles became a well-known and accomplished lawyer in New York City; James P. was a commodore in the navy, and was desperately wounded at Port Hudson; and Justus became a general in the army.

Judge McKinstry was united in marriage to Miss Annie L. Hedges, at Marysville, Cal., on the 27th of July, 1863. Mrs. McKinstry is connected with the Schuyler, Van Rennselaer, Leon Gardiner, Livingston, and other noted ante-Revolutionary families.

The children of this union, besides the Judge's law partner already named, are two daughters, and Captain Charles H. McKinstry, of the U. S. Corps of Engineers.

Judge McKinstry delivered the annual address before the Society of Pioneers at San Francisco in September, 1871, and the address at the Jubilee Celebration at San Jose, on December 20, 1899.

NILES SEARLS.

The chief justice of the California Supreme Court for the years 1887-'88 was born in Albany county, New York, December 22d, 1825. His father was a farmer in easy circumstances, and of pure English extraction. His mother was a Miss Niles, of a well-known family in his native county, the Nileses being of Scotch descent. Abram Searls, the father of Niles Searls, removed from New York to Prince Edward District, Canada, where he purchased land and settled with his family. Niles Searls attended school in Canada, mainly at Wellington, in Prince Edward's county. After five years' study, his father sent him, at his own request, back to his native county in New York, where he attended the Rennselaerville Academy for three years. He then entered the law office of O. H. Chittenden of Rennselaerville, where he remained one year preparing himself for the profession. Just at that time John W. Fowler, a noted lawyer and orator, established at Cherry Valley, New York, the State and National Law School, an institution which for many years cut a conspicuous figure in legal annals. Some of the best minds of the California bar were trained

at this school. Among Mr. Searls' fellows were Hon. Chancellor Hartson, and ex-Lieutenant Governor Machin. Judge Silas W. Sanderson and the late Judge Brockway afterwards attended the same school. Mr. Searls was graduated from this institution after two years' study. His old schoolmates speak of him as having been an indefatigable student and one of the brightest minds of their class. He excelled in mathematics and scientific branches of study, and was an omnivorous reader. He was admitted to the bar of the Supreme Court of the state of New York, May 2d, 1848, and went traveling through Kentucky, Illinois and Missouri, practicing a short time in the latter state. He arrived in California in October, 1849, and located at Nevada City.

Judge Searls had been in Nevada only five days when he found himself a candidate for alcalde. But he was defeated by ten votes of several thousand cast.

In 1852 Mr. Searls was elected district attorney of Nevada county. In 1855 he was elected, on the American or Knownothing ticket, district judge of the Fourteenth Judicial District, comprising the counties of Sierra, Nevada, and Plumas, and served a full term of six years. He was renominated by the Democrats, and was defeated by Hon. T. B. McFarland, now an associate justice of the Supreme Court. In 1864 he closed his law business and went back to New York, where he followed the life of a farmer for six years. In 1870 he returned to his old mountain home in California, and resumed the practice of his profession. In 1877 he was elected to the State senate on the Democratic ticket, and served for one session, his official term being abridged by the new constitution. A political foeman to Governor Perkins, he was yet appointed by the Governor a member of the Debris Commission, and was President of the board when the act creating it was declared unconstitutional, in 1880.

In the spring of 1885 Judge Searls was appointed by the Supreme Court one of the three Supreme Court Commissioners, under an act of the legislature then recently approved. This commission was an auxiliary court in intent and effect, and was created on account of the accumulation of business in our highest tribunal, threatening to block its action. The Judge had labored most efficiently for two years on this commission, when, on April 19, 1887, he accepted from Governor Bartlett the appointment of chief justice of the Supreme Court, made vacant by the death of Hon. Robert F. Morrison.

He served until the close of 1888, being defeated for chief justice at the election in November, 1888, by W. H. Beatty, Republican. He was again a Supreme Court Commissioner for the years 1894-97. He is now residing at his old home in Nevada City.

Judge Searls married, in his native county, in 1853, Miss Mary C. Niles, sister of his last law partner, Addison C. Niles, who was a judge of the Supreme Court, 1872-'79. He has two children, sons, one of them a lawyer, Fred Searls, associated with him professionally, and the other a mechanical engineer.

WALTER VAN DYKE.

The long and honorable career of this pioneer in the judicial and political history of the State is being crowned by a term on the Supreme Bench. Judge Van Dyke was born at Tyre, Seneca county, New York, October 3, 1823. He comes from a family of old Knickerbocker stock, closely related to the Dutch families, which have so long been famous in the Empire State. Judge Van Dyke's father was a farmer, and died when the son was thirteen years of age. The latter attended the district school, and at the age of seventeen entered a select school at Earlville, Madison county. This was followed by a course at the Liberal Institute in Clinton, Oneida county. His studies were frequently broken by intervals of teaching school, to which he had to resort to enable him to secure the means to perfect his education. In 1846, at the age of twenty-three, he went to Cleveland, Ohio, where he pursued the study of law diligently for two years. Upon his admission to the bar of the Supreme Court of that state, which occurred in August, 1848, he entered upon the practice at Cleveland. In the spring of 1849 he started for California, coming across the plains as one of an organized company of fourteen young men. On the long journey he wrote a record of the experiences of his company, and especially of his own observations of natural scenery, and sent letters to a Cleveland newspaper, which were read with wide interest. In one of these letters, written while the company was in Utah, he described what he considered to be the most available route for a trans-continental railroad. The line of the Union Pa-

cific Railway, some twenty years later, closely followed the route which he suggested. From Salt Lake the company turned in a southerly direction, and arrived in Los Angeles, Cal., in January, 1850. A few weeks later Mr. Van Dyke was in San Francisco. The first spring and summer were passed in the mining regions, after which he returned to San Francisco. A company was being formed bound for the mouth of the Klamath River, with the object of laying out a town site and establishing a base of supplies for the mines in the extreme northerly part of the State. He joined this company, and they passed through the Golden Gate in a little vessel, which was wrecked just as the party reached their goal, in attempting to enter the Klamath River. However, with the aid of friendly Indians they all reached shore. Separating himself from the town site scheme, Mr. Van Dyke settled at the town of Trinidad, a short distance down the coast. Upon the organization of Klamath county, in the spring of 1851, he was elected district attorney. At the election of 1852 he was elected to the assembly, and was a member of the legislature which opened at Vallejo and removed to Benicia in 1853. About this period it was owing mainly to his efforts that Fort Humboldt was established and garrisoned by government troops, to secure the settlement against the Indians. The first garrison consisted of three companies, U. S. Grant being one of the captains. Humboldt county being organized in 1853, the young attorney removed to that county. He was one of the commissioners to adjust the debt between Humboldt and Trinity counties. In 1854 he was elected district attorney of Humboldt county. For some years following, while pursuing his law practice, he edited the Humboldt *Times*, the leading paper in that section.

In the fall of 1861 Mr. Van Dyke was elected to the senate of the State, and served at the sessions of 1862 and 1863. At the session of 1862, the Civil War having just broken out the year before, Senator Van Dyke offered resolutions in favor of the firm maintenance of the Union. Three sets of partisan resolutions were already before that body; but Senator Van Dyke offered his as a substitute for the whole, which was adopted without alteration, April 4th, 1862. (See Statutes of 1862, page 608.) In the course of debate a senator inquired who had offered the substitute resolutions. Senator Van Dyke responded, "The Union Party." The Union party was about to take control of the State, and continue in authority for some years, but it was not yet born, and this was the first time the words had been used. A few days after a Union party caucus was organized with Senator Van Dyke as chairman. It was resolved to issue a call for a state convention, but the Republican State Central Committee issued its own call just then, for a state convention to meet in June, 1862. This latter was addressed not to Republicans specifically, but to "All who were in favor of sustaining the present national administration and maintaining the Constitution of the United States, and preserving the Union entire." Upon the advice of Senator Van Dyke, the members of the new party caucus, and those in sympathy with them throughout the State, abandoned their proposed separate movement. When the Republican convention met at Sacramento, Senator Van Dyke was a member, and was unanimously elected permanent President; and so the new party came into existence, and the title, "Father of the Union Party in California," was awarded, with common consent of press and people, to the President of the convention.

At the close of his senatorial term, Mr. Van Dyke removed to San Francisco. He practiced law there with unbroken success from 1863 to 1884. In the year 1874 he became United States attorney for California by appointment of President Grant, and held the office three years, when he resigned. Thereafter the government signalized its confidence in his ability by retaining him in some Spanish grant cases in the United States Supreme Court, which had been commenced in the Circuit Court while he was in office.

In 1878 he was elected as a delegate-at-large to the constitutional convention, on a non-partisan ticket. He was an active member of that body, and chairman of the committee on Article I, Declaration of Rights. This committee reported in favor of making a very important modification regarding the grand jury system. Mr. Van Dyke argued that the grand jury, having lost its original purpose as a safe-guard from prosecutions by government officers, the reason for its continuance no longer remained; and, further, that the grand jury in later years had very often been used in behalf of persons actuated by malice against others, by creeping into the grand jury room, and, on *ex parte* testimony, and in secret, procure them to be indicted,

Walter Van Dyke

although innocent of crime. He favored instead, prosecutions by information, filed by the district attorney, after a preliminary public examination before a magistrate.

The result reached by the convention was a compromise. It was provided that prosecutions for crime should be either by indictment or by information, after examination and commitment.

The remarkable effect has been that a great majority of cases are now prosecuted without indictment, but upon information filed by the district attorney after examination before a magistrate, the duties of the grand jury now being practically limited to the examination of books and accounts of public officers.

Another noteworthy proposition of this gentleman was to embody in the article on education the substance of the act creating the State University, with the view of withdrawing that great institution from party politics and legislative interference, or (to quote) that "its organization and government shall be perpetually continued in the form and character prescribed in the organic act." This proposition was incorporated into the new Constitution, but not until after long and severe debate. Its wisdom is generally acknowledged in the light of the later history of the university.

This judicious and practical member also opposed the creation of the railroad commission in its present form. He objected to endowing it with all the governmental powers —legislative, executive and judicial—and so making it independent, practically, of State control. He predicted that the commission would be more often instrumental in carrying out the policy of the railways than that of the people.

Our subject followed his profession industriously for some sixteen years after this period. He removed to Los Angeles in 1885, where, as a member of a leading law firm, he was at the bar for about three years. He was then elected a judge of the Superior Court of that county for a full term of six years. In 1894 he was re-elected for a full term by an increased majority. In 1898, while on the Superior bench, he was nominated for the office of Supreme Judge—first by the Silver Republicans, and endorsed by the Democrats and the Populists. The regular Republicans carried the State, but elected only one of their two candidates for Supreme judge. Judge Van Dyke was chosen by a vote exceeding that of any other candidate, receiving over 9,000 votes more than the defeated Republican candidate, and over 4,000 votes more than the successful Republican candidate.

He entered upon the duties of a justice of the Supreme Court at the opening of the January term, 1899, at the age of seventy-five. The term of office is twelve years, and that he will serve to its close with unimpaired powers of mind and body is altogether probable. He is a man under the average stature, is very alert in his movements, and has always been of the most temperate habits of life. He is a life member of the Society of California Pioneers. As a judge there are few men who have ever held a higher place in the affections of the people. His character may be seen in his own words: "As long as God gives me breath, the millionaire and the man in rags shall alike receive justice from me either in private or public life."

A. P. CATLIN.

A. P. Catlin was born at Tivoli, Dutchess county, New York, in January, 1823. Thomas Catlin, first of the name known in America, came from the County of Kent, England, in 1643, and settled in Hartford, Connecticut. His posterity for five generations, including Pierce Catlin, father of A. P., were born in Connecticut. David, A. P. Catlin's grandfather was a captain in the Connecticut militia, and was in the action in which General Wooster was killed—the attack by the British General, Tryon, on the town of Danbury. He died at the age of ninety-three. His son, Pierce Catlin, was a school teacher, then a wagonmaker, afterwards a farmer. He died, aged eighty-four. A. P. Catlin's ancestors on his mother's side were Germans. The first of the line came to America and settled in Dutchess county, New York, April, A. D. 1700.

A. P. Catlin graduated at Kingston academy, Ulster county, New York, in 1840. He studied law in Kingston three and a half years, in the office of Forsyth & Linderman, both of whom were distinguished lawyers of eastern New York, and was admitted to the bar of the Supreme Court of New York at Albany, on the 12th of January, 1844; and to the old Court of Chancery as a solicitor on the 16th of the same month. He practiced about four years in Ulster county, where he frequently met as antagonists, in foren-

sic battle, John Currey, afterwards chief justice of our Supreme Court; William Fullerton, the Judge Fullerton afterward distinguished as counsel in the Beecher trial; T. R. Westbrook, later one of the judges of the Supreme Court of New York; and other young attorneys who afterwards made their mark in the Empire State. In the spring of 1848 he removed to the City of New York, and formed a partnership with George Catlin.

On the 8th of January, 1849, he sailed for San Francisco, arriving in that port on the 8th of the following July. In the brief sojourn of a month he witnessed the organization of the first vigilance committee, the formation of the Revolutionary Court that tried the "Hounds," their trial, and concurrent scenes. That court was constituted of Dr. William M. Gwin, James T. Ward, and Thaddeus M. Leavenworth. The first two were elected by the acclamation of a crowd of citizens on Portsmouth Square, to sit with Leavenworth, who was the alcalde and the only lawful authority. The alcalde at first refused to recognize his associates in any capacity other than as mere *amici curiae*. Dr. Gwin declined to act unless he and his associate, Ward, were acknowledged as of equal authority with the alcalde. The latter functionary was compelled by the open threats of the excited citizens, who suspected him of partiality to the "Hounds," to yield the point. Some ten or twelve of the defendants were convicted and sentenced to imprisonment for various terms, the highest being fourteen years.

Mr. Catlin reached the mines in the vicinity of Mormon Island, Sacramento county, in August, 1849. He passed the following winter there, engaged in mining and practicing law before Duncan, the alcalde of that district. Upon his arrival he found that office held by a son of Esek Cowen, who was formerly one of the justices of the Supreme Court of New York, and who wrote the useful treatise upon Justices' Courts. Upon the resignation of young Cowen, Duncan was appointed by Judge Thomas, judge of first instance, and his authority was recognized as absolute in all cases by a large population, and over an extended territory without limit of jurisdiction as to value or character of property involved, until the legislature, in April, 1850, provided for justices of the peace. Returning to Sacramento in May, 1850, Mr. Catlin there met John Currey. They immediately formed a copartnership, and opened a law office. Among the leaders of the Sacramento bar at this time were Murray Morrison, E. J. C. Kewen, Colonel Zabriskie, Joseph W. Winans, J. Neely Johnson, John B. Weller, M. S. Latham, John H. McKune, and Philip L. Edwards. This partnership continued only for a short time. The climate prostrated Mr. Currey, who soon retired to San Francisco.

Mr. Catlin witnessed the squatter riots and the conflict on the corner of Fourth and J streets, between the authorities of Sacramento City and the rioters, on the 14th of August, 1850. On that day Woodland, the city assessor, was killed, and Biglow, the mayor, was mortally wounded. Others were killed in the same fight, among them Maloney, the leader of the squatters. Dr. Charles Robinson, who afterwards became Governor of Kansas, was severely wounded. On the following day, in a continuation of the same fight, a few miles out of the city, McKinney, the sheriff of the county, and several others were killled. The excitement was great, and the city authorities, fearing an assault from the friends of the rioters, who were supposed to be gathering in the country and mining sections for that purpose, made their situation known to the authorities at San Francisco. John W. Geary, then mayor of the last named city (afterwards Governor of Pennsylvania, and major general in the Union army), came to their assistance with two San Francisco military companies, one of them commanded by Captain W. D. M. Howard. It soon proved that the assistance was not needed, and that rumors operating upon an excited and terrified populace, had greatly exaggerated the supposed dangers.

Late in the fall of 1850 Mr. Catlin closed his law office in Sacramento and returned to Mormon Island, being employed to settle the affairs of the Connecticut Mining and Trading Company, which was the successor in interest of the famous store of Samuel Brannan, and to attend to the mining interests which he had acquired in that vicinity in the summer of 1849, and winter of '49-'50. Just then William L. Goggin, the agent of the Postoffice Department for this coast, visited Mormon Island for the purpose of establishing a postoffice there. He requested Mr. Catlin to furnish a name for the office. Mr. Catlin had already formed the "Natoma" Mining Company, adopting that name from the Indian dialect, it signifying "clear wa

A. P. Catlin

ter," and a tradition that such had been the name by which that locality had formerly been known among the Indians. Goggin adopted the name, and that section of Sacramento county was officially named "Natoma township."

Mr. Catlin was always a Whig, as long as there was a remnant of the old party. He was placed on the Whig ticket as a nominee for the assembly in 1851, and was, with the whole ticket, defeated. In the following year he was nominated for State senator, and was elected. He introduced a homestead bill, the same as that which afterwards became law, but which was then, after a hot contest, defeated by the casting vote of the lieutenant governor. His own constituents of Sacramento were faithfully served in much needed local legislation, and in the important matter of the State Capitol. He was the author of the law making Sacramento the permanent seat of government of the State.

At this session, and while the legislature was yet at Benicia, occurred one of the most remarkable trials on record, though very little record of it remains. A prolonged and determined effort was made to elect David C. Broderick, Northern Democrat, United States senator. It was claimed by the Whigs, of whom there were seven in the senate, and by the supporters of Dr. Gwin, Southern Democrat, that as the term for which Broderick was a candidate did not commence until after the next session of the legislature, it would be an unconstitutional act to elect at that time, and so take the election from the body to which it rightfully belonged. This argument had no weight with the supporters of Broderick, who had a large majority of friends in the assembly, but, as it turned out, only one-half of the senate. At that time the legislature could be called immediately into joint convention by a concurrent resolution. The struggle, therefore, was to put such a resolution through the senate. Broderick's election would, at any time during the session, have resulted in twenty-four hours after the adoption of such a resolution by the senate. The forces upon this question stood so evenly divided in the senate that Broderick lacked but one vote, and this it was impossible to obtain. The contest continued through the greater part of the session, and the utmost vigilance was required on the part of those who opposed the election. There were exceedingly few of the senators whose firmness on either side of the question could be doubted. The position of each one of them was made known by more than one test vote. The situation was such that if any one of them had, in his own conscience, been convinced that it was his duty to change, it would have worked his political ruin to follow his conscience.

Peck, one of those who had steadily voted against going into joint convention, was senator from Butte county, a country merchant, of little experience in public affairs. At one of the most critical periods of the senatorial contest, Senator Peck arose to a question of privilege. He charged that Joseph C. Palmer, who was the head of the most important banking institution in San Francisco, and an active friend of Broderick, had attempted to bribe him with an offer of $5,000 to vote in favor of going into joint convention to elect a United States senator. A resolution followed, summoning Palmer to answer for a breach of the privileges of the senate, and ordering his arrest. A day was fixed to hear the matter. General Charles H. S. Williams, one of the ablest lawyers ever in this State, was retained as Palmer's counsel, and Colonel E. D. Baker was engaged by the friends of Peck.

It was evident that a mighty struggle was to take place when such giants took the field. Peck's statement was made on the 19th of January, and the trial was concluded on the 3d of February. A large number of witnesses were examined. Palmer escaped through a single dexterous movement of his counsel. It had been informally agreed by all the senators who were political debaters, that they would permit the trial to proceed without interference on their part, except to vote upon questions as they arose, without debate, and that they should act the part of decorous and impartial judges. Colonel Baker, an orator of profound thought and of more eloquent expression than any of his day and generation, was yet no match for General Williams in the management and conduct of a trial. When all was ready and the senators had settled in their seats and duly put on the air of judges, Palmer was called to the bar. As the accused approached the secretary's table, General Williams requested, in a quiet and matter-of-fact way, that he be sworn. The secretary administered the oath, no objection coming from any quarter. Palmer immediately proceeded to relate his story, and proceeded but a few moments when it was clearly mani-

fested to the sense of every one present that the act of allowing Palmer to be put on the stand as a sworn witness was a grave oversight. But it was then too late to repair the error. Palmer swore that he met Senator Peck on the steamer at the time stated by Peck, and that the latter had in explicit terms proposed to him (Palmer) to vote for Broderick if he (Palmer) would give him $5,000, which proposition he (Palmer) courteously declined, and that was all there was of it.

Thus the character of the investigation was at once changed. Palmer became the accuser of Peck, and was on the stand as a sworn witness in support of his charge. This was before the law permitted a party to be a witness in his own behalf in either a criminal or a civil case. Peck had made his statement upon honor as a senator, and in no sense as a witness, except in so far as his constitutional oath of office bound him to speak the truth. He was not required to be sworn as a witness. He was a poor, obscure, uninfluential, and comparatively friendless, country member. Palmer was a power in the State. Under these circumstances this strange trial proceeded. There was, of course, no witness to the interview, and, therefore, every fact tending to support the statement of either party became important.

At the close of the testimony some two days were spent by the senate in determining whether Colonel Baker should have the opening and close of the argument, or whether General Williams should have that privilege, and some half-dozen votes by yeas and nays, are recorded in the journal, upon various propositions regulating the order of the summing up, without coming to an agreement, until at last the chivalrous spirit of Colonel Baker prompted him to request that General Williams should have the opening and close.

There was one striking feature of this remarkable controversy. While it was fought with the utmost tenacity on both sides, there was an entire concurrence on the part of those opposing the election and supporting Peck—that Broderick had no lot or part in the alleged attempt to bribe, and that he was as unconscious of any proceedings of that character being taken in his behalf as if he had been at the bottom of the sea.

The speeches of Colonel Baker and General Williams occupied two days. The former never, in all his brilliant career, made a more powerful address. And yet no remnant of it has been preserved. The extraordinary circumstances of the case challenged his powers in all their versatility. Palmer and A. A. Selover reeled under his invective. The "Selover Route" from San Francisco to Benicia has not faded from the memory of those who heard Baker then. The senate went into secret session, and there voted without debate. It was in a serious dilemma. There did not appear to be much doubt of Peck's honesty—none whatever of his imprudence in blurting out such a charge against a man of Palmer's standing, with no witness to prove it. The journals show that the senate extricated itself as follows. Hall, Democrat, of El Dorado, moved the following resolution:

Resolved, That the statement made by the Hon. Senator from Butte, Mr. Peck, alleging against J. C. Palmer an attempt to commit bribery, has not been sustained by the evidence adduced in the investigation.

Many attempts were made to modify the original resolution offered by Hall, but it passed by a vote of 21 to 7. Catlin was among those voting in the negative. Immediately upon the adoption of the resolution Crabbe (Whig), of San Joaquin, offered the following:

Resolved, That this decision of the senate in this case is not intended in any degree to reflect upon the honor and dignity of Mr. Peck.

This received 17 votes, with but one (Mr. Mahoney, Democrat, of San Francisco) against it; ten senators not voting. Whether Peck or Palmer won the fight has never been determined. The case offers some solemn lessons to young statesmen, as well as to members of the third house. Never attempt to bribe anybody. If you are offered a bribe, decline it, and, instead of pocketing the money, pocket the insult as quietly as circumstances will permit, unless it should happen (which is quite improbable) that you are able to prove the offer by other evidence than your own statement.

Mr. Catlin was a member of the assembly from Sacramento county at the session of 1857.

It was at this session that Broderick and Gwin were both elected United States senators. Mr. Catlin voted for neither of them, but, with sixteen others, voted for Henry A. Crabbe and James W. Coffroth.

In March, 1872, Mr. Catlin was appointed one of three members of the then State Board of Equalization, and served as such until

April, 1876. The most effective powers conferred on the board by the legislature were, after a prolonged contest, declared unconstitutional by three of the five judges of the Supreme Court, which led to the abolition of the board. During this period he was in the active practice of his profession, but found time to perform prodigious labors in the board named.

In 1875 Mr. Catlin was brought forward as a candidate for Governor before the Independent State convention, but was defeated by the combined votes of the supporters of John Bidwell and Mr. Estee, which, on the final ballot, were cast for General Bidwell. In 1878 he was nominated by the joint convention of the Republicans and Democrats of Sacramento county as delegate to the constitutional convention, but in consequence of the recent death of his wife, and other causes, he declined the nomination. In 1879 he was one of the nominees of the Republican party for one of the seven justices of the reorganized Supreme Court, and was defeated with all but one on his ticket.

In 1890 Mr. Catlin was elected a judge of the Superior Court of Sacramento county, and served the full term of six years, ending with the opening of the year 1897. He then returned to the practice. We closed our notice of his career, in "Bench and Bar" (1889) with these words, which we are glad to repeat:

"Mr. Catlin is a man of indefatigable industry, of very sound judgment, and great power of investigation. He is one of the safest of counsellors, unswerving in his fidelity to his clients, and a good man every way. In speech and argument he is slow but earnest. He has had little to do with criminal business. Having a good memory, he can tell a thousand interesting reminiscences of early times in California. He is slow to anger, has no vices, possesses a generous nature, and, although little given to sport or humor and having a serious, stern, almost morose look, is gentle in spirit and as tender as a woman. A man of pure life, broad knowledge, and strong brain, he still holds a good clientage, and is the junior by some years of a score of men who are leaders at the bar of the State. He owns a very fine library, in which he takes more delight than in society, politics, or external nature. A California pioneer, familiar with all the motley scenes of time's latest drama, he is just touching upon the borders of a serene old age, the venerated confidant of the public, 'Whole in himself, a common good.'"

After the foregoing was written and shortly before this History was complete, Mr. Catlin's life ended peacefully at Sacramento, November 5, 1900.

WILLIAM M. STEWART.

William Morris Stewart, at the head of the Nevada State bar since 1860, was distinguished in the profession in California fifty years ago. He was attorney-general of this State in 1854. He was born in Lyons, Wayne county, New York, on the ninth day of August, 1827. His father was a native of New England, and of Scotch descent. His mother, whose maiden name was Miranda Morris, was a descendant of a well-known New York family. William was the eldest son, and when he was a small boy his parents moved from Western New York to Trumbull county, Ohio, and settled on a farm. His boyhood was spent in assisting his father on his farm, until he arrived at the age of thirteen, when he was allowed to start in the world for himself.

He first worked for a neighbor for $8 a month for six months. He then went to school, in an adjoining township, called Farmington Academy, and managed to support himself and attend that institution for three years. To accomplish this he worked for wages during school vacations, and during term times he sometimes boarded himself and cooked his own meals, and at other times he did chores for his board. A high school having been established in Lyons, New York, his native town, which was called Lyons Union School, he went there to pursue his studies, where, as formerly, he worked on the neighboring farms for wages during the vacations. But his proficiency in mathematics soon enabled him to obtain employment as a teacher of that science in the school of which he was a pupil. His wages during vacation, and compensation as teacher of mathematics enabled him to prepare for college. He entered Yale college, remaining there until the winter of 1849-'50. His mathematical learning, which had been so useful to him in his preparation for college, gave him great prominence in Yale, where he took the first prize in that study. Although he did not graduate from Yale, that institution, a few years after he left, conferred on him the degree of Master of Arts.

Early in 1850, being then twenty-two years of age, Mr. Stewart started for California via the Isthmus of Panama. He arrived in San Francisco on the seventh day of May, 1850, and soon afterward went to "Buckeye Hill," in

Nevada county, where he took the pick and shovel of the miner and went to work. In the fall of 1850, while prospecting, Mr. Stewart discovered the celebrated Eureka diggings, which have been worked continuously ever since. In order to work these rich mines to the best advantage, he projected the Grizzly ditch, taking the waters of Grizzly Canyon and Bloody Run, and carrying them, at an immense expense, down to the Cherokee diggings. The want of lumber being greatly felt, he built the first sawmill on Shady Creek, which furnished an abundant supply to the miners for several years. In the spring of 1852 he went to Nevada City, and commenced the study of law with John R. McConnell (a notice of whom is in this history). In December, 1852, he was appointed district attorney, and at the general election in the following year he was elected to the office. General McConnell, while attorney-general, made an extended visit to the east, and at his request, Governor Bigler, in June, 1854, appointed Mr. Stewart attorney-general. Mr. Stewart then removed to San Francisco. Here he married a daughter of ex-Governor Foote, of Mississippi. He returned shortly to Nevada City, and thence removed to Downieville.

In April, 1860, Mr. Stewart removed to Virginia City, Nevada. He there formed a partnership with Henry Meredith, who soon after was killed by the Piutes, in a skirmish. Mr. Stewart's thorough knowledge of mining law soon brought him all the business he could attend to. Lawyers flocked to Washoe, at the prospect of a rich harvest. Into this litigation Mr. Stewart entered with all the zeal and earnestness of his vigorous nature, and he was retained in almost every suit of importance brought before the higher courts of the territory, and subsequent state, of Nevada. To his legal acumen, sagacity and influence is mainly due the permanent settlement of title of nearly all the mines of the great Comstock lode. His fees were large, and his surplus funds being invested in the development of the mines, he soon became one of the leading operators on the Comstock, and erected for himself the finest private mansion, at that time, existing in the territory. He also invested large sums in real estate in San Francisco. The editor of this History was his law clerk at that day, and in addition to our salary as such, he secured us an appointment from Governor Nye as a notary public. We acted as notary for Mr. Stewart's firm only, and made a hundred dollars a month in notarial fees from the firm's business without leaving the office, or neglecting other duties.

In 1861 he was chosen a member of the Territorial Council, which office he subsequently resigned, and in 1863 was elected a member of the constitutional convention. Here his great legal talent and sound discretion were invaluable. Mr. Stewart was first elected to the senate of the United States in 1864, and was re-elected in 1869. A specimen of the force and clearness of statement of the condition of the mining regions and the rights of miners, which induced congress to abandon the project of confiscation of the mines by forced sales, will be found in the appendix to the third volume of Wallace's United States Supreme Court Reports, page 777, where a portion of a speech delivered by Mr. Stewart in the summer of 1866 is printed. This speech was printed in this volume by the direction of Chief Justice Chase of the United States Supreme Court, in order to explain the decision of the court recognizing the possessory rights of miners on the public lands.

After he retired from the senate in 1875, he resumed the practice of the law in Nevada, California, Arizona, and other places where his services were required, with main office at San Francisco. His familiarity with the mining laws and mining litigation created a demand for his services throughout the Pacific Coast, and he was a prominent figure at the bar in important cases during all the time after he retired to private life. Many questions of public interest were discussed by him during these years with great learning and ability. His brief upon the question of the rights of appropriators of water in California for the purpose of irrigation, which was filed on motion for rehearing in the celebrated case of Lux vs. Haggin, is a powerful statement of the case in favor of the rights of appropriators, and should be studied by those who desire information upon that subject.

His printed argument in the Sharon case, after it was supposed the subject had been exhausted, reads like a novel, and is well worth perusing, not only for the argument, but for its humorous and racy style.

Mr. Stewart was again elected to the United States Senate in 1886, and resumed his old seat on March 4, 1887. He is one of the most useful and experienced members of that body. He was re-elected in 1892, and again in 1898. His present term will expire on March 3, 1905.

He was one of the original trustees of the Stanford University, and we get our facts and much of our language from a sketch of him which appeared at that time in the "Resources of California."

SAMUEL W. HOLLADAY.

This venerated citizen has been identified with the San Francisco bar from the beginning. He is a pioneer of June 4, 1849. He was a member of the assembly in 1858, and city and county attorney, 1860-63. In the legislature he was a Republican when that party was little more than well organized, and had only about one representative in six. Of course, now, while his eye is bright and his step free, his hair is very gray. We recall the time when, seated in the assembly gallery, we heard the Democratic Speaker, N. E. Whiteside, invite Mr. Holladay to the chair to act as presiding officer, and, as the San Francisco Republican lawyer walked up the aisle to the platform, his abounding locks were black as a raven's wing.

To the office of city and county attorney he was elected, and re-elected, by the People's party, born of the Vigilance Committee of 1856, which governed the city well for about twelve years, down to January, 1867.

(In this connection, for an interesting article by Mr. Holladay on the great committee, see the San Francisco *Bulletin* of February 8, 1858.)

Mr. Holladay was born in New York on the 29th day of April, 1823. He married Miss Georgiana Catharine Ord, sister of General E. O. C. Ord, U. S. A., September 23, 1858. Mrs. Holladay is living, the family home, established thirty years ago, being on the elevation at the northeast corner of Clay and Octavia streets, about a mile to the west of California Street Hill. The children are E. Burke Holladay, the well-known lawyer of San Francisco, and Mrs. Allan E. Messer and Mrs. Reginald Brooke. Mr. Messer and Mr. Brooke are both natives of London, England.

Mr. Holladay is referred to with other noble pioneers of the bar, in our sketch of Henry E. Highton. He made a visit to Europe with his family in 1882, and the family made later and more extended sojourns.

He was one of the three executors of the will of the widow, Almira Gibson, probated in San Francisco in 1884, in which a legacy of $3000 was left to each executor. He was also an executor (with William Sherman, United States Assistant Treasurer, and Hon. Samuel Cowles, former County Judge) of the estate of Judge John Satterlee, deceased, and received a legacy of $5000.

Mr. Holladay practiced law in partnership with J. C. Cary, afterwards Superior Judge, from 1852 to 1863. He was next associated with Hon. Nathan Porter, afterwards district attorney, from 1864 to 1873. The firm was for the latter part of the time, Porter, Holladay & Weeks (E. P.). Mr. Holladay continued from that time in the practice, alone, until his son joined him upon being admitted to the bar in 1883. In the Bonanza suits (Q. V.) Mr. Holladay, and John Trehane, attorneys for plaintiff, received a fee of $40,000 each; and their associate, ex-Supreme Judge Nathaniel Bennett, received a fee of $25,000.

Our friend, sunny-tempered in his old age, as ever, is still in practice with his son. The entire profession is his friend. Of positive convictions and strong character, he is charitable and kind to others regardless of condition. He has a classic face, refined manners, a quiet temperament, and is devoted especially to his home and family, and to philosophical studies.

HENRY E. HIGHTON.

If we agree with the members of the "Society of California Pioneers," that only those persons are pioneers who arrived on this shore in the year 1849 or before, then, it will be readily accepted, our pioneer lawyers surviving in 1900 are very few. Indeed, the full body of pioneers yet living is comparatively small. As for the living pioneer lawyers who have won special distinction in their calling, and whom the profession today delights to honor, the entire array from Yuma to Yreka may be counted on the fingers of one's two hands. McAllister and Randolph and McDougall, and Field—who of their compeers are lingering still? Did they have compeers?

From the point of view of the Pioneer societies, some of the very ablest lawyers of the State, who came on the scene at a very early date, were not pioneers. Harry Byrne was not. Nor was Hoge, or Sam Wilson, or Hoffman, or Sawyer, or Jo Baldwin, or the two Shafters.

Not to make comparisons, the first-class men of the earliest day who have lived into a third generation, rise at once on the view. There is Alexander Campbell, at Los Angeles—and Walter Van Dyke, and Cornelius Cole, of that

place. There is Thomas H. Laine, at San Jose. And Niles Searls, at Nevada. And A. P. Catlin and John H. McCune, at the Capital. And in the great city are Annis Merrill, and John Currey, and E. W. McKinstry, and Samuel W. Holladay, and Henry E. Highton.

Mr. Highton is youngest. When we alluded to these worthy men as living in the third generation, we might have excepted him. He was born in 1836, July 31st, in Liverpool, England. On his father's side he came from old Leicestershire lineage, while his mother's family have been settled in Yorkshire for many generations. His father, Edward Rayner Highton, was born in Leicestershire September 11th, 1811, a fellow-countryman of our Baker, and born in the same year with that great lawyer, orator and soldier. In his native country the elder Highton held many military and civic positons, and there, as well as in this, his adopted land, his name and fame are inseparably blent with movements for municipal betterment and for the reformation of criminals, especially juvenile delinquents. The Highton family name is interwoven with modern English history and English classics.

Henry E. Highton's education was commenced at the school of Rev. J. C. Prince in St. Anne Street, Liverpool. During his stay at that institution he took every prize for classics offered to his class. The intention was to complete his education at Rugby, where the Rev. Henry Highton was one of the masters, but this was intercluded by his father's emigration to the United States. It was in 1848 when the elder Highton came to America with his son, the latter then aged twelve years.

It was the parental wish to consecrate young Henry to the pursuit of law, and nature herself acquiesced in the design. A brilliant career at the bar was to be his destiny, which he seems to have early foreseen, and the youth evinced his aptitude for the science, just as Pope "lisped in numbers, for the numbers came." Said the poet Bryant, alluding to his father: "He taught my youth the art of verse, and in the bud of life offered me to the Muses." Mr. Highton may refer to his father with a kindred feeling. By light of sun, or lamp, or candle, or behind the white cliffs of Albion, on the deep, and in the bosom of the broad continent which is the land he loves best, his legal studies, under intelligent parental direction, were never intermitted. His father was never a lawyer, but by his broad reading and grasp of mind was well qualified to teach the young legal idea "how to shoot." We have heard the old gentleman speak, with paternal pride, of his son's early promise, and of the faith in his future, which the boy kindled in the breasts of some of England's learned men. Said the Rev. Mr. Prince to the father, when the latter was about to start with his son for the New World: "Your boy is especially adapted for the legal profession; why not leave him in England? I will take charge of him. I feel he will become Lord Chancellor."

It was at Milwaukee, Wisconsin, that the father and son first settled on this side of the water. There the young man was placed in the office of a leading lawyer. After a few months the gold fever began to rage throughout the country, and the ambitious and adventurous youth, not thirteen years of age, started across the plains for California. Not to touch the incidents of his toilsome and eventful trip, he rested, on September 3d, 1849, at Weavertown, three miles from Placerville, then called "Hangtown." From that date until the spring of 1856, with the exception of a few months passed at Sacramento, he lived in "the mines," engaged in various occupations, working a great part of the time at actual mining in the placers, like many others who afterwards attained distinction at the bar. During this period while his character was forming amid shifting scenes, mushroom settlements and anomalous communities, he kept his mind and heart on the law, studying it in a desultory way, but not altogether without system.

Mr. Highton came to San Francisco in 1856, being then twenty-one years old. He came without means, and knew no one except Dr. C. C. Knowles, the dentist, who took great interest in him, and showed him much kindness. Shortly after the organization of the Vigilance Committee of that year, he became a friend and associate of the late Frank Soule, who, with William Newell, owned the then San Francisco Chronicle, which died a few years later. He was made first reporter on that paper, after the fashion of those days, his duties being afterwards enlarged. He gathered local items, reported law proceedings and public meetings, and condensed news from interior journals, and from Eastern, Australian and Chinese newspapers, which arrived in large batches. After two or three months of this service he wrote leading articles for the old Chronicle, contributing also to the Golden Era and the Spirit of the Times. During the legislative session of 1859 he was the Sacra-

Henry E. Highton

mento and legislative correspondent of the San Francisco Herald, and after th close of the session wrote for that paper a series of articles on the manufacturing interests of San Francisco, and upon other topics. Meanwhile, he pursued his law reading at night.

Then he devoted himself entirely to his legal studies for one year, and, on July 3d, 1860, he passed his examination and was admitted to practice by the Supreme Court, on the report of a committee composed of General Thomas H. Williams and John B. Felton. He answered correctly every question, including the catch query or *pons asinorum*: What is the difference between the undivided moiety of the whole and the whole of an undivided moiety?"

By the advice of Oscar L. Shafter he commenced the practice of law at Sonoma, then just incorporated. In the fall of 1860 he returned to San Francisco and began law practice there. In 1861 Mr. Shafter (who had not then been on the bench) visited the East, leaving to Mr. Highton several important causes to try in the District Court under the supervision of James McM. Shafter and Judge Heydenfeldt. In 1862 Mr. Highton was, for a few months, in partnership with Judge O. C. Pratt and the late H. K. W. Clarke. To the latter's widow, a lady of remarkable intellect and attainments, whose latter years were attended by great physical and mental suffering, he subsequently rendered important services. For a few months, also, in 1864-'5, he was in partnership with William P. Daingerfield and J. Douglas Hambleton. These were his only partnerships. Afterwards for a year or more he was employed especially in certain matters by Hall McAllister, who became his warm and constant friend. He is much indebted to Mr. McAllister for his introduction to general practice.

At times his successful conduct of great criminal cases has left an impression on many that his specialty is that branch of the law. But he, like McAllister, has no specialty. Indeed, he has no fondness, although great fitness for criminal business. He has repeatedly refused to take part in the prosecution of a capital case, and has made this a rule of his professional life.

Mr. Highton has never held, or aspired to a public office, or been a member of a political convention; yet he has great public spirit, which has been often signally displayed.

In 1860 the late John B. Felton and Levi Parsons (the latter had been a district judge in San Francisco) attempted to secure the passage by the legislature of what was known as the "Bulkhead Bill." The proposed measure would have given the whole water front of San Francisco to a corporation of French capitalists, represented by the then powerful firm of Pioche, Bayerque & Co. The boldness and magnitude of the scheme alarmed the metropolis. A "Citizens' Anti-Bulkhead Committee" was formed, with Layfayette Maynard as chairman. Mr. Highton joined this body, and was forced by circumstances and the partiality of friends into a prominent position. He wrote the memorial to the legislature, the address to the senate, and various other documents against the measure, contributing to the local press many articles on the subject, which were published as "leaders." After the mission of the committee was accomplished by the defeat of the bill, he prepared the congratulatory address to the people of the State, of which many thousands of copies were distributed. The committee, through Mr. Maynard, presented to him a fine gold watch, "as a mark of appreciation of his services against corrupt legislation." At the next session of the legislature the bill passed both houses, but was killed by the veto of Governor Downey. Shortly afterward the Governor visited San Francisco, and the people turned out en masse to receive him. A torchlight procession escorted him to the old American Theater (where Halleck Block now stands), and there Mr. Highton presented and read the resolutions drawn by Hon. W. J. Shaw and accompanied them with a vigorous speech.

He was the author of the resolutions read and adopted at the great Union meeting at the corner of Montgomery and Market Streets in San Francisco, in April, 1861. Several other prominent men had submitted resolutions to the committee having the meeting in charge, and some of them were very lengthy. Mr. Highton's draft was preferred.

After the anti-bulkhead victory, Mr. Highton was urged by Lafayette Maynard and others to run for the State senate, but he told them he wanted no office, and the best service his friends could render him was to send him law business.

Mr. Highton was an early opponent of Chinese immigration. He took a firm stand on this question in 1857, and at various times since has given public expression to his views. After President Arthur's veto of the Chinese bill, Senator Ingalls, of Kansas, who had voted

against the bill, addressed a letter to a gentleman of this city, in which he expressed his sentiments on the Chinese question, and declared that the vetoed bill was a deliberate affront to a great nation. The letter was handed to Mr. Highton, who wrote a lengthy reply to the Senator, which was published and widely read. While holding tenaciously to the policy of Chinese exclusion, he is yet uncompromisingly opposed to all violence to Chinese residents. He has said strong things against the Chinese, but has also declared that the whole power of the government should be employed, if necessary, to prevent the slightest personal harm to the Chinese among us, or the invasion of a single one of their legal rights. He and the late Judge Lake, both Democrats, opposed the action of the San Francisco League of Freedom in its aim to obstruct the old Sunday law; they held such action to be anti-American and illegal, because the law, whether right or wrong, as a political measure, had been declared constitutional by the Supreme Court. Mr. Highton spoke on the subject at Platt's Hall.

Mr. Highton has tried, either alone or as leading counsel, many important cases in every branch of his profession, especially jury cases, but he prefers controversies involving intricate commercial questions. He once kept a set of books for three years in order to know how to comprehend accounts. There are leading cases of his in the Supreme Court Reports, in which his name does not appear, because he was employed as counsel and was careless about getting his name into the published volumes. In his early practice he wrote many briefs for other able lawyers. No less a man than Delos Lake said on one occasion: "A legal opinion from Mr. Highton has as much weight with me as a decision of the Supreme Court."

Acknowledging that the working classes have long had good cause for complaint against corporations and capitalists, he yet firmly opposed the movement under Dennis Kearney. He successfully defended John Hayes for throwing Kearney from the platform at Platt's Hall, at a meeting called to consider the relations between the city and the Spring Valley Water Works. This was a long and exciting trial. It was admitted that Hayes did assault Kearney as a matter of fact, but Mr. Highton maintained that the act was committed in defense of the rights of popular assemblage and free speech, and supported his position by many historical and judicial precedents.

On March 16, 1878, at 2 o'clock in the afternoon, a large public meteing was held in Platt's Hall, San Francisco, to express opposition to the proposed purchase of the water works of the great Spring Valley Water Company. The meeting was called by several citizens, none of whom had any affiliation with Kearney or the so-called Workingmen's Party. The attendance was very large. The committee of arrangements had selected Monroe Ashbury for President. Mr. Ashbury was an old citizen, universally honored, and had held several important offices; but he was not the right man to meet the unforeseen crisis which was at hand.

The meeting was not called to order until a quarter of an hour after the appointed time. The hall was full and the audience restive, especially that portion composed of Kearney's contingent, present in large force. The chairman of the committee proposed Mr. Ashbury for president, and declared him elected. Mr. Ashbury was present, but just then there were loud calls for Kearney, who took the platform, and Mr. Ashbury did not appear. There is hardly a doubt that if Mr. Ashbury had been nominated earlier, had promptly responded, and had exhibited a firm attitude, all would have been well. But, as he afterwards testified, he considered the meeting had been packed, that its objects had been defeated, and he declined to serve as chairman. The Sand Lot instantly asserted sway. Kearney himself put the question as to whether *he* should preside. A loud response went up from his men, massed in the center of the hall, and he declared himself elected.

Several speeches then followed, one of them being made by Rev. H. Cox. (Mr. Cox, State Senator Edward Nunan, and Eugene N. Deuprey, then a rising young lawyer, had been selected by the committee as the speakers of the occasion.) Senator Nunan next presented himself and was introduced to the assemblage by Rev. Mr. Cox. Kearney then declared that Nunan should not speak—that no politician in office should speak at a meeting at which he, Kearney, presided. Bedlam then broke forth, and a general row was only prevented by the police, who made several arrests. During the dispute between Kearney and Nunan as to the latter's right, or rather power, to speak, Mr. John Hayes, an old citizen, one of the family after whom Hayes Valley and Hayes street were named, went upon the platform and said to Kearney, "If you do preside over this meeting, you don't run it." Then, getting behind

the "president," he pushed him off the platform into the music stand. Hayes was arrested, and Kearney and Numan continued their dispute with voice and gesture for twenty-five minutes. Finally, Numan was prevailed upon to retire in the interest of peace. After a short speech from a legal light of the Sand Lot, Kearney declared the meeting adjourned, and it dispersed. Three weeks later, April 7, 1878, the trial of Hayes on a charge of battery upon Kearney, was commenced in the Police Court.

The instances are far too numerous to be noted, where peaceable and reputable citizens have been called upon to administer chastisement in cases where the law failed to prescribe any punishment; but in such instances, the result has nearly always been that the party who sought to right his wrong was himself punished by the law. Hayes, of course, committed an assault upon Kearney. The defence it would seem would have plead that the provocation was great if not irresistable. All classes of society agreed that Hayes would be convicted of assault, and would be fined—the better classes hoping that the fine would be the lightest permissible. But Mr. Highton, who appeared for the defence, and also in reality in behalf of society and the public, took the bold and novel ground that Kearney was the aggressor; that he had first committed a technical assault upon John Hayes and upon every other citizen who had entered Platt's Hall to further the object of the meeting; and that when Hayes pushed him from the platform he, Hayes, acted in self-defense and in defense of those who had called the meeting.

Although this was only a case of battery in an inferior criminal court, it makes, by reason of the principle involved, and the able and ingenious manner in which the defense was in effect turned into a prosecution, a bright chapter in Mr. Highton's forensic career. The evidence was interesting, the arguments able and instructive, and the case merited a full report, for wide dissemination in printed volumes.

Mr. Highton probably never achieved a more notable triumph. Immediately upon the close of the argument, the magistrate, Hon. Davis Louderback, rendered his decision, as follows:

"Under the circumstances of the case, I think the conduct of Dennis Kearney in seizing the organization and controlling the proceedings of that meeting, was unjustifiable and illegal. I think the law views his act as an intrusion and a violation of the rights of those persons who originated the meeting, and the right of the people peaceably to assemble for a lawful purpose. This shove was evidently, not for the purpose of an assault, but in assertion of the rights of the meeting. He did not beat him or strike him; but gave him a shove in the excitement of the moment to assert his right and his protest against Kearney's illegal acts. Under the circumstances, I think it does not constitute a battery, or an assault, and the case is dismissed."

The result of this trial was received with great satisfaction by the large majority of citizens. It won for Mr. Highton (who would accept no fee) the earnest plaudits of the press and people, and added largely to his fame as an advocate.

The two principal criminal trials with which Mr. Highton has been connected, presented interesting coincidences. Both grew out of assaults upon the proprietors of the San Francisco *Chronicle*, and both resulted in the acquittal of the accused. The first was the murder case of Isaac M. Kalloch, son of Mayor Kalloch. In this, Mr. Highton was leading counsel for the defense. The accused, whose father had been severely arraigned by the *Chronicle* as being corrupt personally and officially, followed Charles De Young, the senior proprietor, into his business office and shot him down. This was in 1860. In the other case, assault to murder, the accused, A. B. Spreckels, also invaded the *Chronicle* business office and shot M. H. De Young, the sole proprietor, inflicting serious wounds. He, too, claimed to have taken arms in vindication of his father and family. This was in 1885, and in this case Mr. Highton was associated with Hall McAllister. The coincidences failed in the property qualifications of the two accused, Kalloch being a poor man and Spreckels a Crœsus. Both trials progressed at great length, amid deep public interest, and in each there was a general verdict of not guilty.

Mr. Highton argued all the questions in the Dupont street cases, before the Nineteenth District Court, in connection with Judge Garber and Thomas B. Bishop. These cases grew out of the widening of what is now Grant Avenue, San Francisco. He participated in the argument of the actions to enjoin the collection of the Kearney street widening tax, and to recover the taxes already collected. He made arguments in both the District and Supreme Courts.

Mr. Highton delivered the oration in 1883, August 24th, at the laying of the corner stone of the Garfield Mounment in Golden Gate

Park, San Francisco. The ceremonies were conducted by the Knights Templar of the United States, then in triennial conclave. As the occasion was rare in other respects, so the audience was one of the grandest ever addressed by man, numbering, it is believed, sixty thousand people.

In August, 1874, Mr. Highton married the second daugher of the late P. M. Scoffy, long a merchant in New Orleans and San Francisco, who died highly respected and much beloved, in 1895. His wife is an amateur artist of decided merit. She painted a number of fine pictures, one of which, a large painting of Mount Shasta, was exhibited at the rooms of the Art Association.

Mr. Highton has no children. He is a member of the Episcopal Church. He has no patience with infidelity, or atheism, and has frequently spoke in favor of religious organizations, outside of his own church. Among his more recent essays for public study was one of universal interest, "The Book of Job in Relation to Modern Agnosticism." It appeared in the San Francisco *Bulletin* of February 6, 1897, covering a page and a half of the paper.

He always regarded his six years' labor in the mines as of incalculable benefit to him, and credits it with his physical development. It embraced the plastic period of youth, and made him an American at heart and imbued him with a vital sympathy for the working classes. He believes that men's lives are valuable in proportion to the amount of useful work which they do. He thinks that American civilization is the highest, and that the American system of government is the most potent to produce the best results. His faith in the people is thorough and profound.

ALEXANDER CAMPBELL.

This imposing figure, towering so long in the southern part of the State, enjoyed for a considerable period the distinction of being the first criminal lawyer at the San Francisco bar. In the public mind he was associated with criminal trials, and it is true that he had shown himself at his best in that role; but this was because he had more business, and, therefore more opportunity, in that department of law. Of course, a lawyer, even of the first class, cannot always, nor often, control the course or character of his professional work. The people have much to do with deciding whether a lawyer must confine himself to a special line of cases. As was observed of McAllister, they frequently persist in assigning a lawyer to a specialty when he has none. An advocate may, and often does, at the outset of his career, by a masterly effort, establish a local reputation for special aptitude and ability in a particular line, when he is really entitled to a more catholic judgment, a broader fame. He will inevitably become involved with his cause, and the more close his devotion to any cause, the more apt is he to be assigned to the class to which such cause belongs. If he signalize his entry upon the active duties of his profession, by a powerful prosecution or a brilliant defense of a great criminal, he will be fortunate if afterwards he can build up and wield a general practice:—while if it be a great land case that shall disclose the riches of his intellect and the stores of his erudition, he will probably do a land business, if not a "land office business," the remainder of his life. But those whose lots are cast in sparsely settled communities, where the division of labor is never strongly marked, are not so affected.

It was not by his own preference that ex-Judge Campbell devoted most of his time in San Francisco to criminal practice. It was distasteful to him to be assigned to any specialty. He loved the law in its integrity, and disclaimed having special fitness for any particular branch. It is not strange, however, that having been called, in very early manhood, to be the public prosecutor in the great center of American life, criminal practice should thereafter engage his principal attention.

Alexander Campbell was born in Jamaica in February, 1820. His father was an Englishman and a planter. Upon the abolition of slavery in the island, he removed with his family to New York, and thence to Nova Scotia. He sent Alexander to England, and gave him what is sometimes called here a grammar-school education. The young man commenced the study of law in New York, when he was sixteen years old. In 1842 he opened practice in Brooklyn. The oft-used expression, "architect of his own fortune," may be applied to him, if to anybody. He did not inherit a dollar. Not to dwell upon his youthful struggles, he is found honestly and earnestly acquiring a knowledge of law. At his majority he is admitted to practice, and for some years follows his profession successfully, attracting the notice of his seniors by his correct judgment, and his lucid, impressive method of argument. Before he is thirty years old he has been city attorney of Brooklyn, and

Alexander Campbell

district attorney of Kings county. In the latter office he has won a reputation for being an indefatigable, sometimes a fierce, prosecutor of public offenders, whether they operated singly or in bands, cliques or rings.

Mr. Campbell first came to San Francisco in August, 1849. He had been practicing at the bar a little over a year when he became County Judge in a novel way, or rather, at the end of a novel legal controversy. William H. Clark, another pioneer, was regularly elected County Judge at an election appointed by law. On the very day of the election, while the voting was in progress, the legislature, then sitting, passed a law repealing the act under which the election was being held, and conferred upon the Governor the power to appoint a County Judge. The Governor approved this repealing act *on the same day*, and a few days thereafter appointed Alexander Campbell County Judge. A conflict arose between Messrs. Clark and Campbell, which was carried before the Fourth District Court by *quo warranto*, and thence on appeal to the Supreme Court, resulting in a triumph for Campbell; it being held that the repealing act took effect *on the day of the election*, and before the voting terminated, and that the election was therefore void. The decision of the Supreme Court in this case was rendered by Judge S. C. Hastings, Judge Lyons concurring. There were only three members of the court at that day. Judge Bennett, the remaining member, expressed his dissent, declaring that the repealing act did not take place until the day after the election, and that, therefore, the result of the election could not be disturbed by the legislative enactment. It was agreed that the repealing act took effect from and after its passage. Judges Hastings and Lyons held that it took effect the very moment the Governor signed it. Judge Bennett held that an act taking effect from and after its passage, does not become operative until the next day after its passage. (First Cal. Reports, 406.)

By virtue of his position as County Judge, Judge Campbell was Presiding Justice of the Court of Sessions, which tribunal was composed of the County Judge and two justices of the peace as associate justices. While the Court of Sessions was sitting one day—present, Alexander Campbell, presiding judge, and Edward McGowan, associate—an event occurred which probably has no parallel in legal annals. It was the 9th day of September, 1851. The grand jury came into court, and through their foreman presented and read a written request to be discharged on the ground that the executive, Governor McDougal, had pardoned "a certain criminal, a notorious enemy of peaceable men." The court refused to discharge the jury. Judge Campbell remarked that if the jury were to be discharged upon the ground set forth in their report, the court could not refuse, if requested, to discharge the next grand jury; and the next; and not only that, but every officer of the law might, with the same propriety, desert his post and abandon his duties, and so leave the country in anarchy. The grand jurors, having relieved themselves in some measure, returned to their duties.

Judge Campbell resigned his seat on the bench about six months before the expiration of his term, and was succeeded by Judge T W. Freelon. He resumed law practice, which he pursued until the organization of the Vigilance Committee of 1856, when, as Dickens said of London, in describing the religious riots, "the city rose like a great ocean." On account of his onposition to that organization, he withdrew to the Sandwich Islands, for a year. He returned and resumed practice in 1857. From that time until 1881, when he again removed from the city, he was a conspicuous figure at the metropolitan bar.

Among the more noticeable of the cases in which he has been engaged may be mentioned the Black will case; the Harry Byrne will case in which Matilda Heron was the contestant; the impeachment of Judge Hardy, 1862; the breach of promise case of widow Clark vs. Michael Reese; the case of the People vs. Clark; the two trials of the Brotherton brothers, for forgery; and the two trials of Laura D. Fair for the murder of A. P. Crittenden; the case of Kalloch, indicted for the murder of Charles De Young, of the San Francisco *Chronicle*; and the case of Spreckels, indicted for assault to murder M. H. DeYoung, surviving proprietor of the same paper.

The Fair murder case has been touched in the notice of Byrne. On both trials, Alexander Campbell assisted the district attorney in the prosecution. His speech to the jury on the first trial was reported *verbatim*, with all the proceedings, and published in pamphlet. This speech is worthy of study by the law student. It is in Campbell's best vein; is bold, argumentative, manly and powerful, shorter than any other of the four speeches in the case, but just long enough, and delivered, as is his custom, without notes. His fame as an advocate will rest chiefly upon this effort. It does not contain a single quotation from poetry or

prose. It is entirely divested of foreign ornament, but in itself is polished, symmetrical, complete. It is distinguished for its impassioned invective against free love, its skillful analysis of the character of the defendant, and its dreadful anathemas upon her plea of insanity, which he declared to be "a defense shameless, disgraceful, and destitute of any element which could commend it to the heart or judgment of any honest man."

This veteran of eighty winters is a man of lightning perceptions—courageous, forcible, impressive, apt at citation, plausible in his theories, clear and strong in thought and voice, and animated in delivery. He finds attentive hearers in his juries. He gives no thought to the arts and tricks of practised speakers. Seneca's precept seems to be ever before him —"Fit words are better than fine ones." Very rarely does he turn aside from the realm of reason to the domain of feeling, yet has he sometimes touched with rare skill, the chords of sympathy, and sounded the depths of the soul. More than once have we seen warmth, earnestness and power breathe about him, as he poured forth a copious flow of that clear language which has been well said "to spring spontaneously from definite and precise ideas." Before a jury his movements and gesticulation are unrestrained; his voice pleasant, yet not musical, and his expression clear and condensed. He is the most unaffected of men. No man has less vanity. He never courts the reporters—never, by glance or movement, does he betray a consciousness that he is observed.

In 1881, Judge Campbell removed to Arizona, where he soon put himself at the head of the bar, and disabused the popular mind of the idea that he was a legal specialist. After five years in that region, he came back over the California line, and settled at Los Angeles. Here he became associated with two other attorneys of more than local reputation—the firm being known as Houghton, Silent & Campbell. After some ten years, Mr. Houghton retired, and the partnership of Silent & Campbell was continued for two years thereafter. Something over a year ago Judge Campbell was severely injured in a street-car accident, and was confined to his bed for many months. While somewhat lame, Judge Campbell is still a hale and vigorous old man, and does not look the eighty-one years that have passed over his head. He was married in 1872 to Mrs. Ruth E. Quinn, widow of former Lieutenant Governor Quinn, and has by his marriage a son, now an employe of the San Francisco *Chronicle*.

JOHN T. DOYLE.

John T. Doyle was born in New York city November 26, 1819, a son of John and Frances (Glinden) Doyle. His grandfather was an Irish rebel of 1798, and came to the United States in 1803. His son John followed in 1815, and was a well-known bookseller in New York for thirty-five years, down to 1852. The present subject after a course at Columbia College grammar school, New York, entered Georgetown College, D. C., where he graduated, valedictorian, in 1838. He studied law and practiced in New York city from 1842 to 1851, when, on a vacation visit to Nicaragua, he became acquainted with Commodore Cornelius Vanderbilt, then deep in a scheme for cutting a ship canal across the isthmus. On returning to New York he accepted Mr. Vanderbilt's invitation to become general agent of the canal company in Nicaragua. In that capacity he spent a year on the isthmus, and built the still used "Transit road" from the lake to the Pacific. The canal company failed to obtain the capital needed for its projected enterprise, and Mr. Doyle resigned his position and removed to California, where he resumed the practice of his profession in San Francisco, in 1853, and remained until 1888 at that bar.

He has never sought public office, nor held it, except as a regent of the university when it was founded in 1868, and when by appointment of Governor Irwin he served as a member of the Board of "Commissioners of Transportation," his associates being General George Stoneman and Isaac P. Smith. This position led him to a close study of transportation problems, and especially of abuses in railroad transportation. For these he became convinced that the true remedy is to be found, not in the arbitrary regulation of freights by the State, but in the enactment of just rules, by which such charges shall be determined. He holds that railroads are public highways and should be open to all, on equal terms; discrimination between individuals should be made criminal and severely punished as such. As to freight charges, he would begin by abolishing the carrier's common law liability, as an insurer, as uncalled for by modern conditions of transportation, and serving merely to excuse arbitrary charges, having no relation to the cost of the service. Leaving the carrier, then, to elect as to each commodity, whether the ton

or other units should be determined by bulk or by weight, he would classify all merchandise in accordance with its physical characteristics (as facility of handling, loading, stowing, liability to breakage, leakage, etc.), and require the charge for transport to be divided into two parts, viz: A terminal and a movement charge. The former—intended to compensate for receiving, loading, stowing, waybilling unloading and delivering the property (station service, in a word), to be dependent on the class and quantity of the goods; the latter by the distance traversed, equating grades and curves to distance. The rule briefly expressed would then be: "Units of weight; units of measurement; a terminal charge and a rate per mile." Live stock and articles of extraordinary character, as explosives, etc., to be separately provided for, and a proper difference allowed between carload lots and smaller quantities. No deviation from general rule based on the idea of encouraging or discouraging any particular trade or traffic to be permitted without express government sanction. Further details are omitted as inappropriate here, where it is only designed to express the general idea.

These ideas having been adopted, in substance, by the commission, a report, leading up to the proposed reform, was prepared by Mr. Doyle, at the request of his associates; and to avoid hasty innovation and proceed tentatively, it was proposed to require, at least, only a division of transportation rates into a terminal and a movement charge. Mr. Doyle was convinced that this small reform alone would put an end to discrimination between localities, and materially relieve the farming interests from the excessive transportation rates, on produce, then prevailing.

Mr. Doyle said to us, in his emphatic way, when speaking of this subject:

"The railroads scented the danger afar, and rallied their lobby to the defense of their prerogative of plunder."

The bill proposed was amended in the house, and a substitute adopted which legislated the offending commissioners out of office, and replaced them by a single commissioner, charged with somewhat similar duties. To this office the Governor appointed an assemblyman, and he, after a year's service, was followed by the Board of Railroad Commissioners, created by the constitution of 1879, with the State so districted, Mr. Doyle asserts, as to give to the companies the assured control of two of the three, since which time there has been no serious attempt at legislative reform of abuses in railroad transportation.

Mr. Doyle has preserved his familiarity with the Latin classics, and acquired after leaving school the French and Spanish languages, with a reading knowledge of Italian. These, with habits of accurate observation, have served him well professionally and otherwise. Noting while in Nicaragua the modes of legal procedure there, he was able to reconcile the course of proceedings, in the trial scene in the "Merchant of Venice" with Shakespeare's usual accuracy on legal subjects, to which it had been regarded as an exception. This was done in a letter to Mr. Lawrence Barrett, published in a local magazine, and afterwards reproduced in Shakesperiana. The explanation has been generally recognized by the legal profession and by Shakesperian students as satisfactory, and has been incorporated in Dr. H. H. Furness' great Variorum edition of Shakespeare. Dr. Furness says of the paper: "I have long thought it an extremely valuable contribution to Shakespearean literature, and one which never can, or rather, should hereafter be overlooked in any critical edition of the 'Merchant of Venice.'"

We took occasion to draw a picture of Mr. Doyle in our former work on the "Bench and Bar of California," to which we will add nothing here, save that he is at his best in the statement of the details of a complicated state of facts, making their order, connection and sequence easily intelligible. When associated with other counsel he always prefered to open the case and leave the summing up to others. He believes that cases are more frequently won by the opening than by the closing argument.

Though impatient and irascible, he is good-natured at heart, and has materially aided many young members of the profession, who have been indebted to him for encouragement, opportunity and guidance. In literature he has a keen appreciation of the best and his library is a repository of varied lore. He takes delight in Shakespeare and has many famous editions of the master's works, as well as of Horace and Don Quixote. Of the last he possesses a copy which may be called unique, being the Spanish Academy's *editio princeps*, with a mass of illustrations, by various designers, read into the text, and enlarged, where necessary, by extra margins, to its size, so as to make up eight large volumes, beautiful specimens of the work of the printer, illustrator and binder.

Mr. Doyle was married in 1863 to Miss Pons, the daughter of a silk manufacturer of Lyons (France) of which city she is a native. She has borne him five sons and three daughters, the youngest of whom, Mrs. Francis Pope, is recently deceased. His only brother, Emmet, has also lately gone over to the majority, but his sister, Mrs. Eugene Casserly, still survives. At the age of nearly eighty-one years, he passes his declining days at his country home at Menlo Park, among his books and vines and fruit trees, interested in local improvements, current events and current literature, which he is able to enjoy more amply, by the possession of eyes which, notwithstanding sad abuse through seventy years, still scorn the aid of spectacles, even for the finest type. Two of his sons are serving their country, in an humble way, one in the navy, the other with the army in Manila; two others run the vineyard and the wine company, and the youngest, Mr. W. T. Sherman Doyle, has lately been admitted to the bar, where we wish him as successful and honorable career as that of his father.

It is interesting at this time to note that a long interview with Mr. Doyle on the subject of the Nicaragua Canal may be found in the San Francisco Bulletin of July 2, 1891.

E. D. SAWYER.

This early-day lawyer, legislator and district judge who is still at the bar, studied law in the office of Miles Taylor, a prominent lawyer of New Orleans in 1847-1850. After being admitted to practice he sailed for San Francisco January 1, 1851, via Cape Horn. A sea voyage of six months recruited his health. He remained only a few weeks in San Francisco, and then located about September 1, 1851, at Mokelumne Hill, where he made the acquaintance of the Hon. Charles Leake, the only lawyer then at the "Hill." We have heard Judge Sawyer, whom we have known since he was district judge at San Francisco —a generation has passed by since then—narrate some of his reminiscences of pioneer law practice in Calaveras. Mining disputes were frequent, and all of them were tried before a justice of the peace, and usually determined by a jury without regard to value. The District Courts, several counties comprising a district, held three general terms a year at the county seats of each county of the district, but at first there was very little business, and that mostly criminal.

The most of the other business was local and transacted in the County Court, Court of Sessions and Justices Courts. In these latter courts, with untutored justices, many amusing incidents took place. One day a trial was going on before a justice of the peace, and when the plaintiff rested, the defendant moved for a non-suit. The justice said the defendant was entitled to something, and he would grant the motion. The jury were discharged against the protest of the plaintiff, after which the justice was convinced that he had erred, and stepping to the door he called back the jurymen and informed them that the court had misspoke itself, and the trial proceeded.

In another instance the attorney for the defendant moved the court to dismiss an action because the summons was not issued as provided by statute. The justice, becoming indignant about the criticism, ordered the young legal light to sit down, and denying the motion, remarked that he frequently overruled the statute. While similar occurrences were frequent the justices were honest men and did fairly well for a new country.

At another time a justice of the peace empaneled a jury, and commenced the trial of a prisoner for homicide because he claimed there was nothing in the statutes forbidding it. That was better than being tried by a mob jury for murder under hangman's tree, which occasionally happened.

In the fall of 1862, at San Andreas, Mr. Sawyer was hastily sent for to defend a man who had shot a gambler to death over a quarrel about the stakes of a card game. When he arrived at San Andreas he found a few hundred men in great excitement, selecting a mob jury to give the alleged criminal a fair trial. He was soon introduced to his client. He very anxiously inquired what he should do. The client replied that he had friends enough to resist the populace. Mr. Sawyer asked him what he had been doing. He replied: "Defending myself." The lawyer then said: "There is no fear, come out with me and face the jury." The man followed his counsel right out, and the foreman of the jury introduced Mr. Sawyer to the populace and the jury. The advocate mounted a box, told them he was there to defend the accused, and all he asked was a fair trial; and he believed the jury selected would give it. He declared that when a man was sprung upon by an armed man like a wild beast, he must defend himself, even at the cost of human life. That was the case of his client, the man they were trying.

E. D. Sawyer

and if he could not prove it, he was willing to suffer the penalty of death, and they could be the executioners. Then two of the empaneled left the jury, as they found they could not give the defendant a fair trial. Their places were supplied, the jury promised to be just and honest and act without haste or prejudice in their deliberations, and they were conducted by the foreman to a large white tree, under whose unbrageous limbs temporary seats had been prepared for them, and where the defendant was to be executed if found guilty. A ring was formed by the assemblage around the jury, prisoner and attorney, and a man was selected as a prosecutor. The latter was an eminent jurist, and who for some years after adorned the bench of the State. The killing was admitted, and only one witness who had seen the deceased shot was called, and the defendant entered upon his defense of justification. After the evidence the case was eloquently and forcibly argued on both sides and submitted to the jury just as the sun gilded the west at the close of a beautiful autumn day. They soon returned and discharged the prisoner. He was overjoyed at his release, for he knew he would have been then and there hanged if found guilty.

In these days mining towns were filled with gamblers, who, wherever they could, ran the town. Whenever one of their number was interfered with, the gamblers immediately flocked to his aid. In the fall of 1852 a gambler, in a quarrel over a game, shot and killed a miner. The town was immediately under great excitement. The gambler fled. The deputy sheriff called upon the people for assistance. A half-dozen citizens volunteered to assist him in hunting the fugitive. Mr. Sawyer was of that number. He went out of town with another young man to scour the gulch. Others struck out for different places, as directed by the deputy sheriff. The assistant, with Mr. Sawyer, did it alone. When half way up the gulch the fugitive was discovered, arrested, brought into town and delivered to the sheriff.

The gamblers' rule of Mokelumne Hill ceased on that day, and never was resumed. Mr. Sawyer successfully followed his profession in Calaveras county until 1854. In 1853 he was a member of the board of supervisors of that county, where he had some important questions in determining public matters—one of which was the allowance of claims. He did not vote for any county expenditure unless the county had received the benefit. The claims of State census enumerators for services had to come before the board of supervisors for allowance before they could be paid by the State. Mr. Sawyer, being President of the board, objected to allowing them anything, and he and one other formed a majority of those present. The claim was disallowed because they had performed no beneficial services. These political vagabonds went to the legislature then in session, had the law repealed allowing supervisors in Calaveras county to pass on their claims, received their compensation from the State, and never returned to the county. This created some excitement and caused Mr. Sawyer to be nominated at the Whig convention of 1853 for State senator. He was elected to the senate in November, 1853, from the banner Democratic district of the State. Soon after the legislature assembled at Benicia, the contest commenced as to who should be elected United States senator. The legislature was largely Democratic. The great question, negro slavery, was then agitating the North and South. The Democratic party in this State immediately divided upon this controversy. Hon. David C. Broderick was the anti-slavery exponent, and Hon. William M. Gwin the pro-slavery leader; and each with his followers and partisans waged a bitter contest.

This continued the whole session, and all other questions were overshadowed by it. No elections took place and but little useful legislation. Senator Sawyer determined to retire from politics. In June, 1854, he left for the East. He went to Washington City, saw the great men of the nation in congress assembled, and then proceeded to Augusta, Maine, where he met his intended wife, a Miss Trowbridge, of Louisiana, to whom he was married at the residence of Hon. Daniel Pike, July 31, 1854. From Augusta he traveled leisurely to the Pacific coast by way of New Orleans, visiting his relatives and those of his wife. These halcyon days, when all was sunshine and happiness, soon passed; then came, at San Francisco again, the realities of professional life and the struggle for a living. He came without friends or capital, but with education and character. He labored and established a home, practiced as an attorney, firmly taking a good position in society. In 1863 he was a member of the board of education, and served one term.

Wile he was in the board of education an offer of $70,000 was made for the large school lot owned by the city, at the corner of Fifth

and Market Streets, having a frontage of 275 feet on Market Street, and the same frontage on Fifth Street. The majority of the board were at first in favor of the sale, but by the persistent effort of the minority a change of view was brought about. The proposition to sell the lot for a sum that would be a mere bagatelle in the near future, was defeated by a majority of one vote, and the school department still owns the property, which is worth at least a million and a half dollars, and constantly growing more valuable. Judge Sawyer not only never received the value of a nickle for his services as a school director, but, with John Bensley and Hon. Nathan Porter, donated upon his retirement from office a lot in block No. 127, on Potrero—140x200 feet—for school purposes. The lot is still school property and schools will be there before very long.

Our friend was nominated and elected to the judgeship of the fourth district court in 1863, chiefly through the influence of Hon. Eugene Casserly, who for many years was a warm personal friend. Judge Sawyer discharged the duties of his office conscientiously, according to the best of his ability and to the satisfaction of the public. His judicial term was six years, ending with the close of the year 1869.

The San Francisco bar at that period was as able as any in the United States, and the magnitude of legal controversies frequently involved vast properties, real and personal. A summary of the important cases tried and determined by Judge Sawyer during his judicial term would occupy too much space. He had the same experience, toil and trouble as other judges who have served their fellowmen in courts of general jurisdiction. The labor is arduous and the compensation small compared with the responsibility. He left a lucrative practice to go on the bench, and, after experience in both capacities, he preferred to be at the bar—hence he declined a renomination, and at the end of his term resumed the practice of law. Judge Sawyer delivered the address at the Mechanics' Institute Fair in San Francisco, August 10, 1865, and was orator of the day on July 4, 1871. In 1886 he was the Republican candidate for attorney-general. He is a member of the First Congregational church, and has very often responded to calls to address the Y. M. C. A., and other religious bodies. He is still robust in health, and busy and alert in his profession, surrounded with comforts of life and a happy family.

JAMES T. BOYD.

This veteran is closing the fiftieth year of unbroken prosperity at the San Francisco bar. He is a native of New York city, and was born November 10, 1825, in a fashionable boarding-house on Liberty street, next door to the Old Dutch church, on the corner of Nassau street. His father was Theodore C. Boyd, a merchant. Before the Revolution this house was a great sugar house. During the war the British used it as a military prison. Mr. Boyd's ancestry was Scotch (Kilmarnock), English (Graham and Cummings), and Irish (Nugent). His paternal grandparents were natives of New York, his maternal grandfather, of New England. He graduated in 1840 from the academy in West Bloomfield, New Jersey, presided over by William K. McDonald, Esq., afterward a distinguished lawyer of Newark.

It was at President McDonald's suggestion that Mr. Boyd read law. At the invitation of his maternal aunt, Mrs. N. T. Rochester, he went to Rochester City, N. Y., and entered the law office of Smith & Rochester. While there E. Darwin Smith, at the urgent solicitation of Chancellor Walworth, accepted the office of clerk of the Eighth Chancery Circuit, and Mr. Boyd became a deputy in his office. In this position he attracted the favorable consideration of Vice-Chancellor Whittlesy; won that of all the leading lawyers of the circuit, and acquired a valuable knowledge of chancery practice. He was admitted to the bar of the Supreme Court of the state of New York at the October term, 1846, held at Rochester; and about the same time to that of the Court of Chancery by the Vice-Chancellor. He practiced law in New York for a few years, and came to California in 1851, arriving on the steamship Oregon in September. Here he was admitted to the bar, and joined the law firm of Janes & Noyes in San Francisco. His experience in the East, and a natural aptitude for such investigation, induced him soon after his arrival to turn his attention to the study of titles to real property, and he soon acquired, as John R. Jarboe did later, a wide reputation for skill and ability in that branch of the profession.

In 1854 the law firm of Janes, Doyle, Barber & Boyd was formed; followed by that of Janes, Lake & Boyd; subsequently, in 1860, by Boyd & Morrison (late chief justice); Crane & Boyd; McCullough (formerly attorney-general) & Boyd; Cope (formerly Supreme Court justice) & Boyd, in 1876; and Cope, Boyd & Fifield. When Judge Cope retired a few years

James T. Boyd

since the present firm of Boyd & Fifield succeeded to the business.

Mr. Boyd has never sought or held office in California, except that he was a notary public for a few months, accepting the appointment at the request of a client, the late Michael Reese; and in 1880 he was a member of the board of freeholders to prepare a charter for San Francisco.

Mr. Boyd is a bachelor. He still continues the active practice of his profession, and, notwithstanding his advanced years, enjoys professional work. His eye is bright, and kindles yet at the sight of an abstract of title. He has been personally very successful in real estate litigation and in matters of probate, and has accumulated a considerable fortune.

Alexander Boyd, a younger brother of James T. Boyd, was also one of the earliest practitioners at the San Francisco bar. He was born in New York city in 1832, arrived in San Francisco early in 1851, read law with Janes, Doyle, Barber & Boyd, was admitted to the bar, and died after a few years active practice, leaving some estate. He was plaintiff in the oft-cited case of Boyd vs. Blankman, reported in 29th California, at page 19, and in which it was held that an heir retains an assignable interest in land bought by an administrator at his own sale—that an administrator buying at his own sale is trustee for the heir.

This decision is elaborate, and written by Justice A. L. Rhodes, now a judge of the Superior Court at San Jose. It was rendered in October, 1865, but the case ran back to 1851, and Mr. Boyd died before the final determination.

A. J. GUNNISON.

Andrew Joseph Gunnison has been a busy man at the San Francisco bar since the year 1853. It was in 1851 that he came to our chief city from Massachusetts, where he had been reared. His native state is New Hampshire, and he can trace his American ancestry back to 1622. He was admitted to the bar of the Supreme Court of Massachusetts in 1847, and practiced law at Lowell until he left for California. Soon after his arrival at San Francisco he went to Mariposa county, and worked in the placer mines with the crude implements of the time—the pan, shovel and rocker. After a year and a half had been spent he took up his permanent residence at San Francisco, and resumed law practice. His wife came from the East and joined him in the same year, 1853.

In his early practice here Mr. Gunnison was associated with two gentlemen who became prominent in the profession and in public life, namely, Samuel H. Parker and Samuel Cowles. Mr. Parker was afterwards a state senator, and was postmaster during President Lincoln's administration. He was a distinguished Odd Fellow; an Odd Fellows' lodge at San Francisco is named after him, and his monument stands in Odd Fellow's cemetery. Samuel Cowles became Police judge, and later County judge. Mr. Gunnison was the senior member of this firm until it was dissolved in 1860. He then formed a partnership with Samuel G. Beatty, which lasted until the close of 1872. His next association, that with Mr. A. G. Booth, was begun in 1873, and still continues. Mr. Walter J. Bartnett became a member of the firm in 1895, and the name has since been "Gunnison, Booth & Bartnett." The firm has always carried on a general business in large volume. Street railroad companies have been among their principal clients, and of late years they have conducted the settlement of many large estates of deceased persons, among these being the estate of William P. Fuller of Whittier, Fuller & Company.

Mr. Gunnison was, of course, residing in San Francisco in the period of the great Vigilance Committee. He was, like Judge M. C. Blake and a large number of lawyers, probably a majority of the bar, in hearty accord with that organization. During the Civil War he contributed generously to the sanitary fund, which fund was swelled so enormously by the donations of Californians.

In July, 1862, Mr. Gunnison took passage on the steamship Golden Gate for a trip to the eastern states, by way of the isthmus. The ship was burned and 200 lives were lost on the Mexican coast. The ship was run shoreward and grounded. This was the great calamity spoken of in "The Story of an Old Bank Deposit," which appears in this History. Mr. Gunnison jumped overboard and swam ashore. Returning to San Francisco to start again on the trip, he found that the Union Republican party had nominated him for the assembly. He was successful with his ticket at the ensuing election, and served at the session beginning January 5, and ending April 26, 1863.

Mr. Gunnison is of calm, judicial temperament, and strong in mind and body in the evening of a prosperous, well-spent life. He

registered as a voter on May 24, 1866, as being then of the age of forty-three years.

LAWRENCE ARCHER.

Lawrence Archer, the Nestor of the San Jose bar, as we had occasion to call him as long ago as 1882, kept occupied with the duties and honors of the profession until 1900, when he retired. He was born and reared in South Carolina. He is now 80 years of age. His father, to whose memory he is very affectionately attached, was a merchant and farmer, belonging to the line of Virginia Archers, as distinguished from the Maryland branch of the family. The stock is English. He lost his wife when his son, our subject, was 15 years old, and about the same time, after a successful business career, was overwhelmed by reverses of fortune, and was unable to carry out his cherished intention to give his son a complete education. All is well that ends well, however—as we shall see.

Professor Leverett, a school teacher at Anderson, S. C., advised young Archer to pursue the classics. He loaned the young man books, intstructed him therein, and employed him as assistant teacher to enable him to pay his way. It was a hard struggle, but one that was marked by exceptional assiduity, for, in eighteen months the student-teacher, or teacher-student, had mastered books that usually require a four years' course. What with the kindness of Professor Leverett, the receipts of little sums from the sheriff for serving papers, etc., and the fact that he made his home with a married sister, our young friend got through in good shape.

A benefactor offered him the means to go to college. The offer was gratefully accepted, and the institute agreed upon was the University of Virginia. The fates so decreed that he should remain there but six months; the ups and downs of life are not confined to California, as some imagine. Young Archer's friend was ruined financially, and suddenly, and the student returned home to study in another line—and he now entered upon his life work, and a long and prosperous life work it has been.

He commenced the study of law when he was twenty years old, in Abbieville, South Carolina. A year later he went to Mississippi, which seemed to him then to be the verge of creation. It was in the year 1841, and in a season of great commercial depression. Judge Baldwin's "flush times" were even then a thing of the past. However, although he did not linger long, it was there that Judge Archer got his first start. He was admitted to the bar in Mississippi, and practiced in Yazoo county for about two years.

The opening of Judge Archer's professional career was most brilliant and auspicious. He was in a frontier community, but his habits were correct. His first case involved the personal liberty of a colored man. Under the Mississippi laws at that date, a free negro who was found within the state, without license or guarantee, could be apprehended and sold, the term of his involuntary servitude under the sale not to exceed two years. A certain negro was thus sold, and a lawyer named Crenshaw sued out a writ of habeas corpus on his behalf. Crenshaw asked young lawyer Archer to argue the case, and the latter did so. The court held that the negro had been rightly and lawfully sold, and was rightfully and lawfully in bondage. Crenshaw then abandoned the case. Under the same state law a negro who had been sold unlawfully or irregularly, could maintain suit for damages against his purchaser. Mr. Archer instituted such a suit in the bondman's name and the case was tried before a jury of slaveholders. They brought in a verdict for the plaintiff and he was free again.

This brought the young attorney some important business, and he had become established when he determined to go farther west. He located next at St. Joseph, Mo. He was well received there, and acquired business rapidly. The Governor appointed him district attorney to fill a vacancy. He accepted and was at the ensuing election chosen to that office for a full term. One of his predecessors in the same office was Hon. Peter H. Burnett, who afterwards was the first Governor of California. The judge of the District Court having made himself obnoxious to the bar by his partiality, despotism, etc., and being nominated for re-election, Mr. Archer was put in the field against him, as the candidate of the bar. The sitting judge withdrew from the contest, whereupon Mr. Archer withdrew also, saying that the object of the bar had been accomplished. A new man was elected. This was in 1850, when Mr. Archer was 29 years old.

Our subject came to California in 1852, settling first at Sacramento. He was getting into a good business when the great fire of November, '52, drove him away. After a stay of two months in San Francisco he went to San Jose, and in that city he has resided and followed the profession steadfastly since Jan-

uary, 1853. At first he figured in criminal suits. Gradually he worked his way into great land cases. Chief among these latter were Touchard vs. Singleton, involving the Chabolla grant of 10,000 acres in Santa Clara county; and Miller vs. Dale, a contest between two extensive land grants near Gilroy, in the same county. It was about 1859 that Mr. Archer found himself with a murder case on his hands just before the close of a term of the District Court. He had been remarkably successful with his cases throughout the term. Messrs. Wallace and Ryland were associated with him, and they suggested that the murder case be allowed to go over to the next term. "I feel," said Mr. Archer to his associates, "that my luck has not been exhausted. We will try the case." They tried it and won it.

One Reddick charged a man named Paige with stealing the former's cows. Paige sued Reddick for heavy damages for slander. On the trial, Mr. Archer, representing Reddick, in his statement to the jury said, "Gentlemen, if you think, from the evidence, when you shall have heard all of it, that the plaintiff is not guilty of grand larceny, I hope you will bring in a verdict against my client for the full amount of damages prayed for."

Judge Wm. T. Wallace, who was present, declared that this was the boldest act on the part of an advocate that he had ever witnessed. A verdict was rendered for the defendant.

Mr. Archer was elected County Judge of Santa Clara county in 1868. He had been used to the title of "Judge," from boyhood. He would, as a youth, sit quietly and listen attentively to whatever was under discussion, in the family circle, or the school, or the store, and when all others had got through, he would say a few weighty words concluding the whole matter. This habit of summing up won for him the title of "Judge," in his palmetto town, when he was yet a little boy.

The Judge resigned his seat on the bench in 1871. In that year he ran for congress on the Democratic ticket against Gen. S. O. Houghton, and was defeated. He was a member of the assembly at the session of 1875-76, and was chairman of the committee on corporations. In 1878 he was elected mayor of San Jose and served out his term. That was, we believe, his last official service.

The following which we wrote of the Judge in 1882, we understand still holds true:

"In 1854 Judge Archer built the best residence in San Jose. He built, and still owns, the fine building at the principal business corner, in which he has his office. Just within the city limits he has a noble and fruitful farm of 160 acres. His cherry orchard, once the finest in the State, is still productive. He prunes with his own hands, personally attends to the cultivation of his land, and is annually rewarded not only with luscious fruits and fragrant flowers, but substantial grain."

The Judge married at St. Joseph, Mo., when he was 29 years old, Miss Louisa, daughter of Dr. Marlin, of that place. The lady died at San Jose now many years ago. A boy of seven years, of this union, was lost, and a daughter is living. In 1870 the Judge married Miss Alice Bethell, a lady who was then on a visit to San Jose. There are two sons of this marriage. One of these, Mr. Leo B. Archer, is a lawyer and was for some years in partnership with his father until the latter's retirement, since which time he has been alone in the practice.

CORNELIUS COLE.

Cornelius Cole was born at Lodi, Seneca county, New York, September 17, 1822, the seventh of twelve children. His paternal ancestors were natives of New Jersey, of English origin, mingled in marriage wih the German family of Van Zant. His maternal ancestors were also English, named Townsend, joined in marriage with the family of Ganong. As the time of the arrival of any is at present unknown, all must have come to America at an early date. They were generally farmers and thrifty citizens, the later generations residing near Townsendville, New York, a small village named for his grandfather, its first settler. A few months later followed his maternal grandfather, who settled near by, and here these sturdy pioneers battled with adversity in the wilds of their forest home, conquering all opposition by the same indomitable perseverance and earnest effort that has characterized their descendants, and especially the subject of this sketch. Here was passed the latter's earlier years, though surrounded by scenes very different from those with which his ancestors had been familiar; the howls of wolves had given place to the "church-going bell," the gloomy savage and the wandering hunter had been changed as by a magician's wand, into a circle of society, justly celebrated then, and pleasantly remembered for its purity, intelligence and excellence. Not nursed in the lap of wealth, nor yet pinched by poverty, his summers were spent in assisting his father in the labors of the farm, and his winters in attendance upon the district school, where he was early distinguished for his proficiency in

mathematics. Later, winters were devoted to teaching school in neighboring districts, and thus in part he earned the means to complete a classical education, upon which he had long been determined.

A limited practice in the art of surveying also aided him somewhat in his efforts at self-reliance. For, to his credit be it said, his desire to help himself and thus allow the resources of his father to extend to the education of his younger sisters, was the motive power of his actions, rather than the present inability of his father's means to supply him. His first winter away at school was spent in the academy, at Ovid, Seneca county, whence, though some seven miles from home, his drafts for board, though not the highest, were always duly and promptly honored; not on some bank, but upon his mother's well-stocked cellar; as, for the sake of economy, he "boarded himself," as the phrase goes. Vividly does the writer remember the Monday mornings, when about to leave for school, the worthy matron would insist on absolutely loading the sleigh with stores of solid viands, regardless of her son's smiling remonstrances, and the last article was generally a few mince pies, or a basket of apples. And well does he remember the glow of love and pride that flushed the broad brow of the mother, and beamed so kindly from her moist eyes, as she smiled a good bye to her son in the distance. Who can estimate the effect of such a mother's affection on a young man's future? Upon the subject of this sketch it has borne its fruits. Early manifesting a fondness for learning, being of a thoughtful and studious disposition, he soon took place among the first for good conduct and ability.

After leaving Ovid, he entered the celebrated Genessee Wesleyan Seminary, at Lima, New York, where he vigorously pursued his course of study, taking active part in the literary societies, and obtaining at that early age a good reputation as a sound debater and logical reasoner, rather than as a celebrity in high-sounding periods and classical allusions. His efforts were directed rather to demonstrate the truth and value of a position, than to tickle the ear of the multitude. Having acceptably and thoroughly prepared himself for college, he entered the Wesleyan University of Middletown, Connecticut, whence, after three years of collegiate life, he graduated with honor. While here the writer was his roommate, the last year of his college life, and many personal incidents occurred, now dimly shadowed by time. They peep out from the dark curtain of past memories, too faint in outline for even a willing pen to portray, but often the subject of pleasant musing. At the close of the first term, we found our funds running alarmingly short. An investigation showed that the senior member of the firm, and in consequence purse-bearer, had made very frequent investments in loans to impecunious students, which proved very generally permanent, and necessitated extreme economy for some time to come. This was accomplished by hiring an old woman to cook, and buying our food in bulk; even yet, a pang of regret comes at the recollection of a tub of butter purchased cheap, but only superficially good. Its depths were strong as Homer's heroes. The answer, too, of our butcher, to a remonstrance against tough beef, "that we didn't buy much, and we wanted it to last," did not appear half as witty then as it does now. After awhile the writer, as junior member, was compelled to carry the money, from the fact that an inability to say "No" seemed chronic with his senior, and the two students were consequently enabled to board again. At the time of the graduating class at the house of President Olin, the Rev. Doctor asked: "Mr. Cole, what do you purpose to do?" The answer was: "I intend to study law, sir!" "Well," said the doctor, "a man may be a good lawyer and a good Christian, but it's a pretty tight squeeze." After graduating, the law student was for some time in the office of Hon. William H. Seward, at Auburn, New York, where he was admitted to the bar of the Supreme Court of the state of New York, May 1, 1848. In 1849 he started overland to California, arriving there in July of that year, having suffered severe hardships upon "the plains." After mining some months in El Dorado county, he removed to San Francisco, where he engaged in the practice of his profession about two years. He then removed to Sacramento, where he practiced over ten years.

While in Sacramento he was one of the first and most prominent organizers and supporters of the Republican party, when Republicanism was sufficient cause for personal injury and unlimited abuse of its advocates, of which he received a full share, including personal threats and persistent efforts to injure his business. Much of the subsequent success of Republicanism is doubtless due to his persistent, fearless and honest support in those hours of trial. He was defeated as a candidate for clerk of the Supreme Court of California, in 1856, dur-

ing which year he edited and published the Sacramento *Daily Times*, the leading Republican paper in the State, in the Presidential contest then pending. He was district attorney for the city and county of Sacramento in 1859, 1860 and 1861. He afterwards resided a year in Santa Cruz, California, still engaged in his profession.

He was married January 6, 1853, to Miss Olive Colegrove, of Trumansburg, Tompkins county, New York, an estimable lady, with whom he has since lived in great domestic happiness, the union being blessed with numerous offspring.

In 1863 Mr. Cole was elected to congress by ballot through the whole State, receiving 64,985 votes. He served in the thirty-eighth congress, on the committees on postoffices and post roads, and Pacific Railroad. He introduced and carried through congress the important bill establishing a steam mail line to China and Japan, and several other prominent measures.

In December, 1866, Mr. Cole was elected to the United States senate, to succeed Hon. James A. McDougall, receiving on first ballot in Republican caucus sixty votes to thirty-one cast for Aaron A. Sargent, and on first ballot in joint legislature, ninety-two votes against twenty-six for W. T. Coleman, the Democratic candidate. He entered the senate March 4, 1867, and served on committees for appropriations, claims, manufactures, postoffices and post roads and revision of laws.

As will be inferred from the above, Mr. Cole's peculiar characteristics through a long and honorable career were unswerving integrity of action and intention, tenacity of purpose, a contempt for wealth and its influences, a strong sense of justice, and fidelity in friendships. Domestic and temperate in habit, and modest in ambition, his honors have been thrust upon him, rather than plucked down by a bold hand.

The foregoing was written in 1870 by a lifelong friend of Mr. Cole and appeared in our "Representative Men of the Pacific," published in that year. We only have to add that Mr. Cole's senatorial term ended March 4, 1873, when he was succeeded by Aaron A. Sargent. He returned to California and engaged in the practice of law in San Francisco. While so occupied his family lived on land owned by him a few miles from Los Angeles, where a beautiful settlement called Colegrove has since sprung up. In 1888 he joined them there, and followed law practice in Los Angeles. A few years later he retired from the profession. He has several grown children, one of them being Hon. Willoughby Cole, of whom a notice appears on another page. The ex-Senator and his good wife are in excellent health, and living in ease and comfort in their fine home at Colegrove.

S. O. HOUGHTON.

Colonel Sherman Otis Houghton, an eminent member of the California bar for forty years, first at San Jose, and latterly at Los Angeles, has a long American ancestry. The first of the line, John Houghton, came from England in 1635, landing in Boston, at the age of four years. A cousin of his had come from England a few years earlier, and it is supposed that John, whose father was not with him, was sent to join his cousin, whose name was Ralph Houghton. Ralph and John were among the founders of Lancaster, Massachusetts. John died in 1684. From him, through his fourth son, Benjamin, Colonel Houghton is descended. Benjamin was born in 1668. His third son, Benjamin, Jr., was father of Abijah Houghton, who was born in 1723. Abijah's second son was Abijah, Jr., born in 1747. He married Mary Sawyer, and died in 1831. Abijah Otis Houghton was the offspring of this union, born at Sterling, Massachusetts, June 4, 1796. This was Colonel Houghton's father.

Both Benjamin Houghtons were American soldiers in the War of the Revolution, and were among the "minute men" of Lexington. The second Benjamin, at the age of sixteen, was in the battle of Bunker Hill, in his father's company, and was there wounded twice, and recovering from his wounds, enlisted again.

Colonel Houghton's grandfather on his mother's side was also a Revolutionary soldier. His (the Colonel's) mother was Eliza Ferrand, born at Hanover, Morris county, New Jersey, July 4, 1795. She was of Huguenot ancestry, her family belonging to a Huguenot colony which settled in northern New Jersey, which they purchased from the Duke of York, the original grantee of that region from the British crown. The Colonel's father, before named, we may add, was a printer in his youth, and afterwards was editor of various newspapers, among them being the *Orange County Gazette*, published at Goshen, New York. He was there initiated a Mason in June, 1818.

Colonel Houghton was born in New York

City, on April 10, 1828. He was educated there at the Collegiate Institute. In June, 1846, at the age of eighteen, he enlisted as a soldier in the War with Mexico—in the First Regiment, New York Volunteers. The regiment was ordered to California by way of Cape Horn, and sailed from New York in September, 1846, arriving at San Francisco on March 26, 1847. After a few days Colonel Houghton's company was ordered to Mexico, and took passage on an old bark, the "Moscow," which had been used for gathering hides along the coast for shipment to Boston. The "Moscow" sprung a leak, and the men landed at Santa Barbara, where they remained until a United States man-of-war called for them and took them to Mexico.

Colonel Houghton was with the American forces in that country until the middle of September, 1848. He was then ordered with comrades to Monterey, California, where he arrived in October, in the United States ship-of-the-line Ohio, the commander of which was Thomas Ap Catesby Jones, who was head of the American navy at that time.

Our subject now received his discharge from the army. He went at once to the gold mines, which had been first discovered a few months before, and engaged in mining and trading for about nine months. He then went to San Jose, and settled down. He was admitted to the bar of the old District Court at that place in 1857; to the bar of the State Supreme Court in 1859, and to that of the Supreme Court of the United States in 1871.

Colonel Houghton's first triumph at the bar, and his first case in the State Supreme Court, was in the very year of his admission to practice in that tribunal. It was a Santa Clara County case, Scott vs. Ward, set forth in the California Reports, 13th vol., page 458, decided in April, 1859. Therein he overturned the whole doctrine of the law that had obtained in this State down to that time. It had been uniformly held that a grant made to a married person was community property under the colonization laws of Mexico of 1824, and the Regulations of 1828. Colonel Houghton contended that such grants were gifts, and the separate property of the spouse named in them, whether husband or wife. He prevailed in both the District and Supreme Courts, and owed his victory to his knowledge of the Spanish language and the Spanish and Mexican laws. The opinion of the Supreme Court in Scott vs. Ward was a great surprise to the bar of the State.

In the case of Donner vs. Palmer, arising in San Francisco, and involving the validity of an alcalde's grant of a city lot, Colonel Houghton overthrew the settled doctrine of the courts on another question of great consequence. The decisions had all been that an alcalde's paper delivered to a grantee, setting forth the conveyance of the land, was the real grant, while that functionary's record of the grant, entered, as law required, on his official register or record, was secondary—in effect a copy. The Colonel contended that the original entry was the primary evidence because it was a public record. The Supreme Court sustained this view. In this case, which is reported in 31st California, at page 500, the name of the alcalde had been surreptitiously erased from the paper issued to the grantee.

The decision in this case so disturbed the bar of the State that many of its members petitioned for a rehearing, and that the bar be invited to attend and discuss the question. This was granted, a number of lawyers attending, and all of them taking stand against Colonel Houghton, except Sidney L. Johnson. The court adhered to its opinion.

Later, in another case of the Colonel's, taken to the Supreme Court of the United States, that court decided in accordance with the doctrine laid down in Donner vs. Palmer. This was the case of Palmer vs. Low. Many pages, indeed a book, could be devoted to a mere statement of the many other important causes which Colonel Houghton has carried to a successful conclusion in his active and long career.

The Colonel was elected to the national house of representatives twice, from the first district, as a Republican. His period in congress was four years, from March 4, 1871, to March 4, 1875. His party was divided in 1875, that is, a branch split off. He was unanimously nominated again for congress by the regular body, but P. D. Wigginton, Democrat, was elected, the Democrats sweeping the State.

While in Congress, Colonel Houghton secured the first appropriation by the general government for the improvement of the interior harbor of San Pedro. This was in 1871.

Colonel Houghton removed to Los Angeles in 1886, and has been in practice there ever since.

His only partnership in that city was with Messrs. Silent and Campbell, as referred to in the sketch of Judge Campbell in this history. When Mr. Walter F. Haas, who had qualified

for the bar in his office, became city attorney in January, 1899, he asked the Colonel to accept the position of assistant in the office, and the latter assumed the place, principally out of a desire to be of help to his student and to make his administration successful. He retired from office with his young chief in January, 1901, having rendered the city services of great value in important litigation.

Colonel Houghton is always so titled, from his early and prominent connection with the State militia. He was colonel on the staff of that other distinguished lawyer, as well as law writer, H. W. Halleck, when the latter was major general of the National Guard of California, in the fifties. He had been with General Halleck in Mexico. While he was on General Halleck's staff the General and Colonel together framed the first militia law of this State. The legislature adopted it as a whole. After the great Vigilance Committee of 1856 they prepared a new militia law, which was also passed as presented.

The Colonel has been twice married, both of his wives having been little girls in the ill-fated "Donner party" of 1846, when their parents perished of exposure and hunger. The first Mrs. Houghton was Miss Mary M. Donner, daughter of George Donner, and the marriage occurred at Santa Cruz, where she was then living, in 1859. She died at San Jose in the following year, leaving a daughter, who still resides with her father. The present Mrs. Houghton was Miss Eliza P. Donner, daughter of Jacob Donner. This marriage took place at Sacramento, in October, 1861. The two Donners named were brothers. Jacob was the leader of the "Donner party." By the last marriage there are living three sons and two daughters. One of the sons, Mr. Charles D. Houghton, is a lawyer of Los Angeles.

Colonel Houghton keeps in splendid health and mental vigor, and is actively following his profession. Judges and lawyers alike—his contemporaries of early days and young practitioners—speak of him as one of the ablest and worthiest members of our State bar. His residence is in Los Angeles, but he owns a farm in the county.

JOHN T. KINKADE.

This veteran of the Placer county bar is a native of Virginia, and was born on the foothills of the Alleghany mountains on the 24th day of January, 1828. He was educated in the schools of Virginia and Ohio, attending last the Wesleyan University at the city of Delaware, State of Ohio. He was at one time a classmate with the late ex-President Hayes. At the age of twenty-one years he was admitted to the bar in the Circuit Court of Virginia, which was then the court of last resort in that State. He came to California by prairie schooner across the plains in 1849, landing in Hangtown (the first name of Placerville) on the last day of August, 1849, and like a majority of other pioneers, became an "honest miner." Mr. Kinkade prospected extensively in the mines, from Del Norte to Tuolumne, but he was not a lucky miner.

In 1857 he began practice as an all-round lawyer, in civil and criminal work, and has continued in practice to the present time. His home is in Auburn, and it has been in what is now Placer county, since the 14th day of February, 1850, and he has taken an active part in politics and education for many years.

For thirty years past he has made a specialty of practice of equity and probate work. He is now seventy-two years of age, and apparently but little past the prime of life. He is a lawyer of the old school. He is now the president of the Placer County Bar Association.

EDWARD SPALDING LIPPITT.

This veteran of the bar was born in Windham county, Connecticut, September 17, 1824. He is of Rhode Island stock. His grandfather was a colonel in the war of the Revolution, and his father was an officer in a cavalry regiment in the War of 1812.

Mr. Lippitt was educated in the common schools of New England and prepared for col-

lege at East Greenwich, R. I. He graduated at the Wesleyan University in 1847, and before graduation was elected principal of a preparatory school at Pembroke, N. H. He was at Harvard Law School in the winter of 1848-9. Edward Everett was then president, and Story, Parsons, Greenleaf, and Washburn were professors in the law school. Without completing the course he left for Cincinnati, having been elected professor of mathematics in the Wesleyan Female College. He was admitted to the bar of Ohio in 1853, and commenced the practice of the law in the firm of Probasco, Lippitt & Ward. In 1857 he and R. B. Hayes, afterward President of the United States, were partners and were elected city attorneys for the city of Cincinnati. They continued in that position until the breaking out of the Civil War in 1861.

The bar of Cincinnati at that time contained many men who afterward achieved national reputation. Of the older were Judge Storer, father of the present minister to Spain; United States Senator Pugh, Governor Tom Corwin, Henry Stanbery, Salmon P. Chase, and others. Of the younger members were R. B. Hayes, Stanley Matthews, Judge Hoadley, Robert McCook, Geo. H. Pendleton, and others.

At the commencement of the war Mr. Lippitt came to California and was elected professor of mathematics and natural science in the University of the Pacific. In 1863 he located at Petaluma and for a time took charge of the public schools of that city, but in 1867 returned to the practice of the law.

He took a prominent part in the location and construction of the San Francisco and North Pacific Railroad, and in 1874 became the counsel for that road, and was thereafter general counsel of the same until the death of J. M. Donahue.

For eight years he was city attorney for the city of Petaluma and was a director also in the board of agriculture of that district for eight years. Though holding no political office, he has made the canvass of the State at every general election since 1865.

He has been a prominent Mason and in 1895 reached the highest office in the State, that of grand commander of the Knights Templar.

In 1851 he married Sarah L. Lewis, of Monroe, Louisiana, by whom he has five children living. The younger son, Frank K. Lippitt, for the last ten years has been associated with him in the practice of law under the present firm name of Lippitt & Lippitt. Mr. Lippitt, although past seventy-five, is still as vigorous as he ever was in health and in the practice of his profession, with the prospect of a much longer life.

—*THE EDITOR.*

NECROLOGY OF
RECENT YEARS

1883, to May, 1885. The arguments alone consumed nearly five months. Mr. Delmas closed the case, answering Hall McAllister and J. P. Hoge, who had immediately preceded him. We give here some extracts from his argument, as a specimen of his style of forensic address. He began by saying:

"It is with no little diffidence and embarrassment that I rise to address a court which has already listened to a four months' discussion of this cause. The learned and exhaustive arguments which have been made, presenting not only in their broad and general outlines, but also in their minutest details, every phase and theory of this controversy, enforce the conviction that little now remains to say. Even were it not so, the extraordinary length of time already consumed in the hearing would warn me to abstain from a much longer trespass upon the attention of the court. It is, therefore, I repeat it, not without hesitation that I invoke, for a while longer, the indulgence of that patience and courtesy which have presided over and lightened our labors in this court, and which will ever remain treasured up and cherished among the most pleasing and grateful memories of this protracted contest.

"The magnitude of the issues involved would not permit, however, their final submission without a closing argument on behalf of the plaintiff. In that argument, which, by favor of my associates, has been entrusted to me, I shall endeavor to be as brief as the nature of the question will permit. I shall not attempt to review or to answer in detail what has been so well and ably said by our learned adversaries; much less shall I undertake to examine and comment upon the hundreds of adjudicated cases and precedents which they have cited in support of their theories of the law. Whilst such a course might claim the merit of fullness, it would, it seems to me, inevitably lead to much diffusion, and detract from the order and coherence which, I conceive, should be aimed at, at least, in every logical discussion. I shall content myself with a statement, in my own way, of those propositions of law and fact which appear to me to be fundamental, and upon which I have from the beginning thought this controversy must ultimately rest —propositions, in the soundness of which my confidence has in no degree been shaken by anything which has fallen from the lips of the learned counsel on the other side."

After an elaborate review of the facts and the law, extending through a week, Mr. Delmas ended as follows:

"If these facts shall be found proven, the plaintiff may, I trust pray for the judgment of the court, without calling to her assistance any technical rule of law, born of casuistical refinement, or strained presumption, whose lost origin and uncertain cause is looked for in vain through the mists of the past. She may invoke that judgment, by virtue of those eternal and immutable principles, which time cannot obscure nor subtlety attenuate; principles which existed as well when the Jewish Lawgiver brought down the tables of the law to the wandering tribes of Israel, as when Roman praetors formulated their edicts in the imperial dominions of Augustus and Justinian, or the great Chancellors of England, the Hardwicks, the Thurlows, the Eldons, laid broad and deep the foundations of the equity jurisprudence of Britain; principles which are part of man's being, and inseparable from his nature; principles which the finger of God himself has inscribed in the breast of every virtuous man, to enable him, in all ages, in all climes, and in all conditions, to distinguish right from wrong, to seek truth and to shun falsehood, to protect the weak from the insolence of the strong, to love justice and abhor injustice. Upon these principles, Sir, the plaintiff here demands judgment in her favor; and, in the full confidence that the decision of the court, to whichever side it incline, will be guided and directed by these immutable rules of universal law, the case of Ellen M. Colton is now finally submitted to your Honor."

Since he was elected district attorney of Santa Clara county, in 1867, Mr. Delmas has never been a candidate for any office, having devoted himself entirely to the practice of his profession. He was, however, appointed a regent of the University of California by Governor Stoneman, in 1884, and served until 1892. While a regent he was President of the day on the occasion of the inauguration of Hon. Horace Davis as President of the university, March 23, 1888, and delivered the address of welcome.

In 1869 Mr. Delmas married a daughter of Colonel Joseph P. Hoge of San Francisco. There are four children of this union, one of whom is the wife of William S. Barnes, ex-district attorney of San Francisco.

Mr. Delmas has always been a Democrat, and is sometimes seen in gatherings of his party. In the Democratic State convention, at

John Garber

Stockton, in 1884, as chairman of the committee on platform and resolutions, he led the opposition which frustrated by an overwhelming majority the Presidential aspirations of Judge Stephen J. Field. He maintained, in a powerful address, that it was against sound policy and the spirit of our institutions to permit the discharge of the duties and functions of a member of the Supreme Court of the United States to be disturbed by political intrigues.

Mr. Delmas' home has always remained in the county of Santa Clara, where he owns a splendid estate of five hundred acres, though as a city residence he bought in San Francisco in 1890 the family mansion of William T. Coleman, at the southwest corner of Taylor and Washington streets, paying $40,000 for the home of the departed leader of the great Vigilance Committee of 1856.

JOHN GARBER.

The signal distinction of holding the first place at the great bar of San Francisco belongs to John Garber by the general verdict of the profession in that city and throughout the State. This bar leader and jurist first came to San Francisco from his native state, Virginia, in 1857, at the request of his uncle, Joseph G. Baldwin, who, a year later, became a Justice of the Supreme Court of California. He was in Judge Baldwin's office in the building at the northeast corner of Montgomery and California streets, for six months. He then went to Santa Cruz, and practiced there for a year and a half. He tried his first case there before Hon. S. B. McKee, District Judge. He was at the San Francisco bar, 1867-1870, in association with D. P. Barstow (Barstow & Garber), with offices in the Montgomery block, and residing in Oakland. He then had a short career in the State of Nevada, which was crowned by a period of service on the Supreme bench. He was elected to that high place as a Democrat, in November, 1870. He took office in January, 1871, and served until November 7, 1872, when he resigned. His associates on the bench were two men of distinguished legal attainments, B. C. Whitman and J. F. Lewis, both of whom have been dead many years. Returning to this State, Judge Garber resumed law practice at San Francisco in partnership with Colonel Harry I. Thornton (Garber & Thornton), which lasted from 1874 to 1880. Mr. Thos. B. Bishop then entered the firm, which continued as Garber, Thornton & Bishop, until 1887, when Colonel Thornton withdrew. It was during this period that ex-Chief Justice John Currey remarked to us that this was the strongest law firm in the State. The firm continued as Garber & Bishop until 1890. It then became Garber, Boalt & Bishop, and so remained to 1895, although Mr. Chas. S. Wheeler was a partner from 1893. In 1895 the firm was dissolved "by mutual consent." Judge Garber united with his cousin, ex-Superior Judge E. R. Garber, and established the firm of Garber & Garber, Judge John H. Boalt opened an office by himself and soon retired, while Messrs. Bishop & Wheeler continued practice under that style, Messrs. Ludwig M. Hoefler, Guy C. Earl and William Rix being associated with them. E. R. Garber died in 1897. Since early in 1898, Judge Garber's associates have been Hon. Harry T. Creswell and Joseph B. Garber. (Garber, Creswell & Garber).

In the summer of 1899, the firm publishing this History sought to obtain the judgment of the profession throughout the State as to who were the twelve ablest members of the San Francisco bar then living; and to this end sent out printed slips to all the attorneys of the State, requesting that twelve names be written hereon, in the order of merit from the point of view of the subscribing voter. The "returns" were unexpectedly light, but perhaps heavy enough to serve as an index of the general estimation. The country vote slightly exceeded that of San Francisco. The names leading for the first place were, in the order of preference, John Garber, Garret W. McEnerney, D. M. Delmas, E. S. Pillsbury, Thos. I. Bergin and Thos. B. Bishop. The last two were tied. Mr. Pillsbury was fourth in the line, Mr. Delmas a little above him, and Mr. McEnerney a little above Mr. Delmas. Judge Garber's vote exceeded the combined strength of all the other gentlemen named, and was nearly one-half of the total returned. His San Francisco, or we may call it "city vote," if Los Angeles does not object, was much larger than his country vote. Mr. Delmas' vote was three-fifths from the city. Mr. McEnerney's vote was equally divided between city and country.

The qualities of mind displayed by Judge Garber in forensic discussion are pre-eminently those of strength and clearness. He seeks to convince by his learning and logic—not to dazzle by rhetorical pyrotechnics. His legal learning is extensive and accurate. He has read and mastered every decision which can throw

any light upon the subject in hand, and his powers of analysis are such that an adjudication which upon the surface may seem to be antagonistic to his position, will be shown by him to be entirely consistent therewith. In other words, his knowledge of legal principles obtained through profound study of the reasons upon which judges have based their decisions, coupled with his capacity for perspicuous statement and skilful handling of analogies and illustrations, has placed him among the leading lawyers of the United States. Besides the intellectual qualities which we have mentioned, he brings to the support of his cause, those powerful auxiliaries, honesty and sincerity. The judge who listens to him places entire confidence, not merely in his learning and capacity, but in his desire to state fully and fairly the law and facts of the case—meeting always the requirements of our code, which demands of the lawyer that he shall "employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law." (C. C. P. 282.)

Hon. James D. Thornton, ex-Justice of the Supreme Court, has kindly sent us the following from his pen relative to Judge Garber:

"John Garber was born at Staunton, in Augusta county, Virginia, and is about sixty-seven years of age. He commenced active business life as a civil engineer, studied engineering at the University of Virginia, and was then employed under Charles Ellet, an able man and distinguished in his profession as engineer. Mr. Garber's first employment in that capacity was on the Virginia Central Railroad, which ran from Richmond to Staunton, passing through Rockfish Gap in the Blue Ridge. At the university he graduated in mathematics, Latin, chemistry, natural philosophy and modern languages.

After pursuing his calling as engineer for about two years, he commenced the study of law, was admitted to practice in Virginia, and soon afterwards came to California.

He lived and practiced law in Nevada City, California, and went from that place to the State of Nevada, and followed his profession in Austin and Pioche. He made his mark as a lawyer in that state. He became a Justice of the Supreme Court of Nevada, and was an able and useful judge. He remained on the bench about two years, then resigned and came to San Francisco, where he took a high stand in his profession and argued the most important cases. He was successful in every way, in winning cases and in accumulating money and property.

Judge Garber is able in all kinds of cases. I do not know about admiralty law, but am confident that if he turned his attention to it he would excel in it. He is profoundly grounded in legal principles, learns all kinds of law with great facility and rapidity, and I have no doubt that he would take a high rank in the courts of Westminster if he appeared in them.

As a speaker his is the eloquence of sound argument. His diction is vigorous, apt and appropriate.

His manner in court is dignified, decorous and easy. He seems perfectly at home, and is always respectful and courteous to court and counsel.

He excels in cross-examination of witnesses. Colonel Harry I. Thornton told me that Judge Garber was the best cross-examiner he ever saw. He is always prepared in his cases. The rules and principles applicable to them seem to be as familiar as the way to his office or the courts. Without disparagement to other able members of the San Francisco bar, I class Judge Garber among its leaders, if not as its leader. That bar may well be styled able and learned. I say this, after a knowledge of its members for a space of more than forty-five years.

Judge Garber seems to have explored the fountains of the law, as well as its streams and rivulets. Such is his knowledge of the law, that to solve the intricacies of a case is to him no difficult matter.

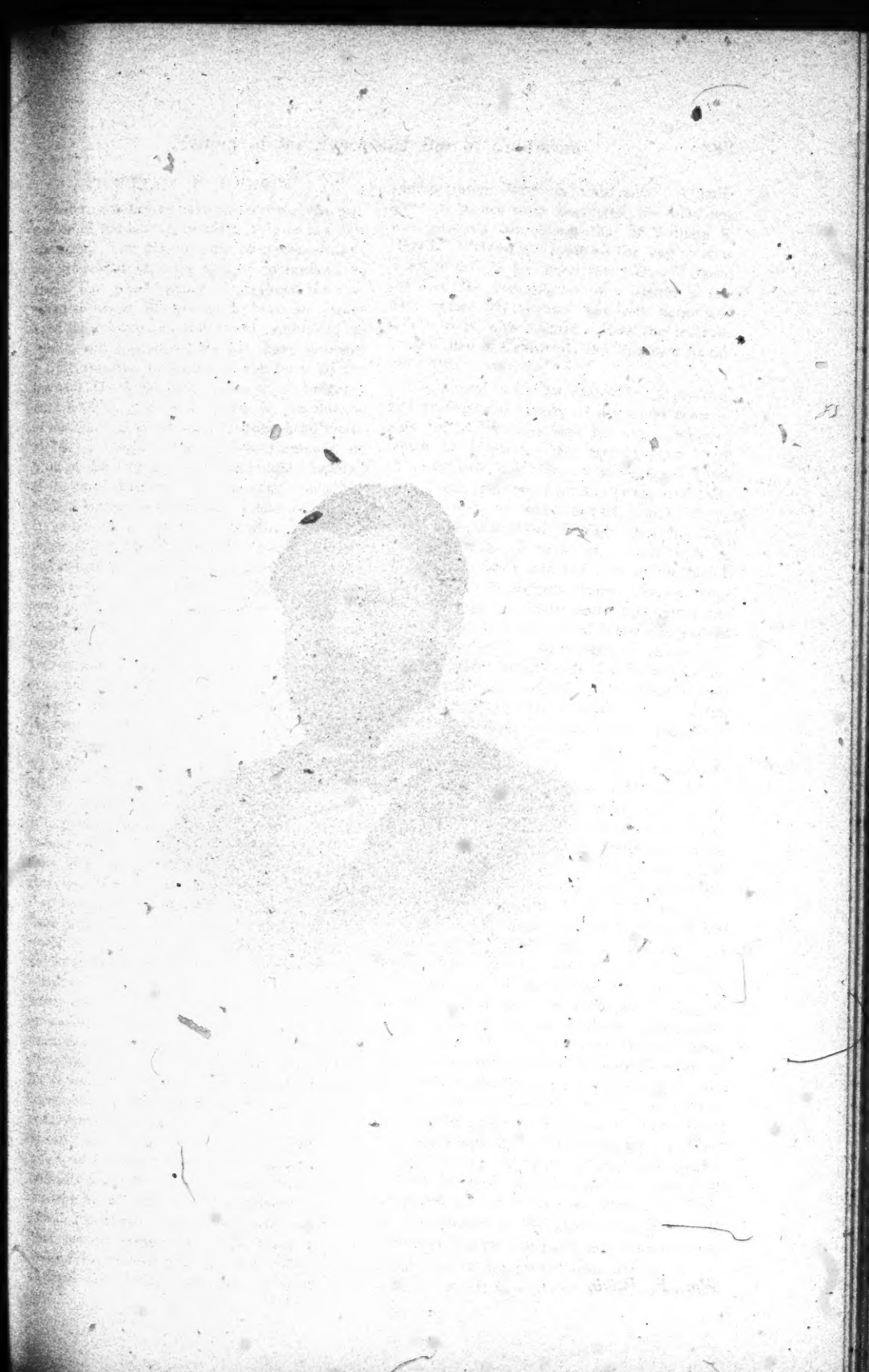
He has been and is now a great general reader of literature, history, poetry and the leading works of fiction. His conversation is bright, interesting and instructive; few men are more entertaining in their talk.

He is a man of high character and a worthy citizen. He is a Democrat in politics, of the gold wing of the party, and is always ready to give good reasons for his political views.

He is a great mining and corporation lawyer. As a mining lawyer he has no superior.

In all the departments of law he has studied he stands in the first rank for attainments.

Judge Garber married in early life a daughter of Judge John White, of Alabama, who was a prominent citizen and distinguished lawyer. He has several children. His eldest son, Joseph Baldwin, is his partner, as is also Harry T. Creswell, Esq. The firm is a strong and successful one.



Wm. F. Herrin

WILLIAM F. HERRIN.

Modern conditions have so recreated the profession of the law as, in effect, to give it a new character. The development of transportation, the growth of industry and of commerce, the rise of that great agency of progress, the corporation—these things which have so stimulated the energies of the world, multiplied its wealth, and specialized its life, have wrought a truly amazing evolution in the trade of the lawyer. The legal practitioner is no longer a mere bookish prig or a master in the chicane of the criminal court, or a bustling head clerk. He is no longer either Quirk, Gammon, or Snap of the city bar, nor the loutish "squire" of the rural districts. On the other hand, the modern lawyer is essentially a man of affairs, in professional association with the vital things of the effective world. His chief function is that of counsellor and guide to the so-called practical men who are doing the world's work in its organized departments. He has all the professional learning and all the professional spirit of his ancestral type, the old-time lawyer, and he has added to these qualifications knowledge of the practical things, a developed business judgment, and the balance of the man of the world.

We are speaking of the modern lawyer in his best development, and we have in mind Mr. William F. Herrin, the general counsel of the Southern Pacific Railroad Company. It is given to some men of exceptional fortune to sum up in themselves and to personify in their own characters the spirit of the times they live in, and of the things with which they have to do, and Mr. Herrin is one of these rare men. The temper of the modern world is his temper; the force of large conditions finds in him a corresponding force. As a lawyer, strictly speaking, he has the weight which comes from a profound study of legal principles, combined with a profound confidence in the working out of results in conformity to principles As an administrator he has the promptness and the resolution which come from absolute reliance upon his own judgment, from what may be termed the habit of success, and from the temperamental calm which no transient motive ever for one moment disturbs. "It is no accident that Herrin is where he is," said a very prominent railroad official recently. "Our people, in seeking a chief counsel some years back, made a cold-blooded inquisition for the best combination of legal knowledge, business judgment and administrative force in California. A half-score of names were suggested, but only one was seriously considered—that of William F. Herrin." "Have you come all the way to New York to talk to me about this matter?" asked the late Mr. Huntington of a visitor a few days before his death. "Go back home and talk it over with Herrin. He's the levelest-headed man in California, and whatever he advises that I will do."

It is natural to feel an interest in the personal and professional history of a man so remarkable for his success and for the confidence which he inspires. Mr. Herrin came from the Southern and Western stock from which also came Jackson, Lincoln, Grant and McKinley—from the old American stock, strong in its inheritance of English character and tradition, with a dash of Scotch-Irish to quicken the fancy and put iron in the blood. He was born in Jackson county, Oregon, August 7, 1854. His early youth was under the double discipline of a good home life and of wholesome labors. At sixteen he entered the Oregon State Agricultural College at Corvallis, maintaining himself by working in the harvest field during vacation time. From Corvallis he went to the law school of Cumberland University, in Tennessee, from which he graduated with honors. Thus early—for he was not yet twenty-one—the qualities of personal judgment and of personal courage asserted themselves, for in selecting his place to make a start he chose the metropolis of the Pacific Coast. To San Francisco he came, with fewer dollars than there are days in the month, an absolute stranger. It was a struggle, of course; but it was a struggle in which there was never any doubt about the outcome. A youth disciplined to labor, used to self-support, without vices, willing to live in the humblest way, eager to work, and willing to serve, grasping at the smallest opportunities and making the most of each—first a minor clerk in the office of Hon. Clarence Greathouse; soon Mr. Greathouse's confidential assistant; next a junior partner in the firm of Stewart & Vanclief (Senator William M. Stewart and the late Judge Peter Vanclief); next a potent figure in large litigation; next chief counsel for the Bank of California and for other large corporations; at thirty-nine chosen by Collis P. Huntington as the general counsel of the Southern Pacific Company, and thus the foremost man in the professional life of the Pacific Coast. It is a record of such distinction

as has not been surpassed in the professional life of the country.

There is no simpler, less affected, less "puffed-up" man than William F. Herrin. He takes small time to consider matters personal to himself. He is today just what he was as a farmer's boy and as a student—plus the wisdom of an eventful life, the poise of experience, and the authority of high achievement. He is as painstaking today as in his first case, and as careful of small things as of great. It is quite incidental that Mr. Herrin has come to be a man of very considerable wealth; for it is impossible that one of such large earning power, combined with business discretion, should not thrive. But it is as a lawyer rather than as a capitalist that he is known and considered. He lives in dignified elegance—a man of family (Mrs. Herrin is a daughter of the late Judge Vanclief), a man of supreme success, and at forty-six still a growing man.

One who is familiar with Herrin's career as a practitioner and administrator has reviewed his methods of work. Says this writer, "He neither shirks the smallest duty nor does he shrink from the most stupendous task . . . The fact that he may distribute the work of his department never seems to suggest the idea of divorcing himself from a broad undertaking, and where the work has been portioned out he more than likely has anticipated every point his subordinate would be likely to encounter. . . . He would have made a great banker or railroad president or surgeon. . . . There is a combination in his character most contradictory and unusual for he is a man of broad policies, and yet a man of details, and these two traits seldom come together in one individual. Mr. Herrin is not given to superfluous words, nor to superfluous men."

Quoting from declarations made with reference to Mr. Herrin by others the same writer says, "A prominent member of the bench once said: 'Herrin never trusts to his luck or to his genius to win his cases. He comes into court thoroughly prepared to try his case. In argument I have heard him anticipate his adversary by stating the strongest points against his own position, and then heard him tear that argument to shreds.' When he enters the court-room he is as familiar with his adversary's side of the case as he is with his own." Another striking testimony to Mr. Herrin's strength before a court comes from a member of the Inter-state Commerce Commission. His recent appearance before that body brought from one of its members this warm encomium: "We have had before us probably every prominent corporation attorney in the United States, and my associates agree with me that your Mr. Herrin is the ablest of them all. He knows his case thoroughly; he does not irritate the court nor badger witnesses; he cheerfully concedes points that other men would be apt to quarrel over, without purpose, but he picks the weak points of the other side, and exposes them in a way that is as instructive to the court as it is annoying to his opponent.

"In his connection with the Southern Pacific Company and the multitude of allied corporations he has brought a loyal and untiring spirit coupled with a grim determination to get at the root of things. When he entered the department as its chief, he began by carefully mastering every detail of past operations; and they were many and most perplexing. Within six months he had every essential detail well in hand; then he commenced his system of pruning, and with the deliberation of a surgeon, he began to eradicate things he did not approve and coolly cut off what appeared to be the most vital portions of the department. He did not stop until the task was finished, although the doing of it must have been anything but pleasant. He then began a systematic rebuilding along lines in harmony with his own views until now the organization is well nigh perfect. . . . There is no beating of drums accompanying railroad litigation, no long list of regularly retained attorneys at extravagant salaries, but every lawyer of ability in the State knows that he may be employed at any time in the company's litigation. The claims department and the tax department have been added to that of the law, and while giving personal attention to all of these, there is probably not a branch of the railroading, from construction to operating, that has not received his careful attention and investigation. He understands all the whys and wherefores of freight rates and the rules that govern their making."

This same writer sums up Mr. Herrin's character in the following words: "He is a man of indomitable will, tireless energy and rare intuitive powers. He is broad of vision, yet scrupulously careful as to details. His capacity for work is illimitable. He has a head for organizing, and setting out to perform a task he may be trusted to keep at it until the work is done and well done."

R. H. Lloyd

R. H. LLOYD.

In this gentleman the California bar possesses the most eminent Mason in the United States—the most exalted Knight Templar. He was elected Grand Master of the Grand Encampment at the triennial conclave held at Pittsburg, Pa., in October, 1898. Accordingly, the office of the Grand Master is in San Francisco. The next conclave, when his successor will be chosen, will be held at Louisville, Ky., in 1901.

Mr. Lloyd impresses the stranger as a typical American. If a person not informed on the subject were told that he was born in any part of the United States, north, south, east or west, he would readily accept it. If he heard that Mr. Lloyd was an Englishman, he would doubt it. If assured he was an Irishman, he would say, "That can hardly be." We have asked Irishmen to guess at Mr. Lloyd's nationality. No one ever replied, "Ireland."

Mr. Lloyd was, however, born in Ireland, of Irish parents. He came to California in boyhood—away back in the early fifties. He began the study of law in the office of Colonel James, a noted criminal lawyer; then he was in the office of John S. Hagar, who had been Judge of the Fourth District Court, and was afterwards United States senator. He worked industriously for both James and Hagar, going errands and copying law papers. He was an ambitious, hearty lad, and happy when occupied with honest work.

A few days after he had entered Judge Hagar's office, he had occasion to tell the Judge that a new coal scuttle was needed. "Go to Snooks," said Hager. Young Lloyd looked up at the Judge as if hurt. He thought his employer was making sport of him. Now, Snooks was a plumber close by, and his sons are still in the business in 1900, and when Judge Hager, seeing Lloyd's dejection, told him where the place was, it was all right; he went and got the scuttle. (He told us of this in 1868.)

Mr. Lloyd was educated in San Francisco. In 1857-58 he worked and studied in the law office of McDougall & Sharp, at 625 Merchant street. He was admitted to the bar of the Supreme Court in 1859. The next year he held forth as an attorney-at-law, having an office with McDougall & Sharp. In 1861 the firm of McDougall, Sharp & Lloyd was established. General McDougall, on his election as United States senator, withdrew from the firm, in 1862, and Sharp and Lloyd continued together until the beginning of the year 1876. They then separated, remaining good friends, Mr. Sharp dying not long afterwards. In 1876 Mr. Lloyd formed a partnership with Francis G. Newlands. In 1880 William S. Wood joined these gentlemen, and the firm of Lloyd, Newlands & Wood existed for some two years, when Mr. Newlands removed to the State of Nevada to enter upon a long political career. Mr. Lloyd and Mr. Wood, under the style of Lloyd & Wood, are still associated after the lapse of eighteen years.

Mr. Lloyd was naturalized at San Francisco in 1856. When the first registration act was passed ten years later, he registered as a voter, in June, 1866, as being a native of Ireland, and then thirty years of age, which makes him in 1900 sixty-four years old. After taking a good look at him, whether one had long known him or not, one would say he was about fifty. He is of medium stature and weight, clean shaven, a decided blonde, has a fine large eye, and is very alert in his movements. He has never touched alcohol or tobacco. His old partner, McDougall (turn to his sketch) believed in Women, Wine, Whisky and War. Mr. Lloyd does not. When once or twice, in illness (at one time critical, a few years ago) his physician prescribed whisky, Mr. Lloyd rebelled, and only yielded when the physician threatened to have him held while it was administered.

Mr. Lloyd has never married. He devotes some of his time to fraternal orders, of course to Masonry especially.

We well remember hearing Mr. Lloyd and Robert C. Rogers (who had been public administrator) engaged in business conversation in 1872. Lloyd remarked to Rogers that he would give ten thousand dollars for a certain piece of property. When he turned away we said to Mr. Rogers. "Mr. Lloyd has prospered." (It seemed to us so short a period since he had begun practice, without resources as we understood). "Well," said Rogers, "I would take his check for ten thousand dollars."

A few years later, when the Bank of California suspended (in 1875), it was very soon re-incorporated by a syndicate, of which Mr. Lloyd was a member. He subscribed $100,000.00, and came afterwards to hold stock of the bank to the amount of $150,000.00.

Mr. Lloyd, independent of his partner, has probably the finest private law library west of Chicago. He told us in his office on the 21st of May, 1890, that his law library had

cost him $30,000.00; that he had the Supreme Court reports of all the states and the United States, and all the Common Law reports; that he bought two or three new books every day, at a daily expense of about ten dollars.

He is a man of very simple tastes, dresses in plain black and belongs to the conservative type of men. He is very approachable and companionable, and no one enjoys more favor among his professional brethren. We had occasion to speak of Colonel Joseph P. Hoge's holding to one office in Montgomery Block for thirty-four years, until he went on the bench late in life. Mr. Lloyd has only changed his office twice since he became a lawyer forty years ago; but more interesting to note, during even a longer period he has not changed his residence at all. Able to buy or build on a grand scale, he clings to the old home at 1010 Folsom street, near Sixth, where he grew up to manhood and where his mother lived until her life ended a few years ago.

GARRET W. McENERNEY.

This man of counsel and argument has, at the age of thirty-five, placed himself among the recognized masters of the profession in this his native State. Indeed, it was not yesterday when he pressed his way to this high authority. When he had been at the bar about ten years, some five years ago, he was a principal figure in the great causes that occupied the courts, and he then entered the wide province occupied by ten or twelve dominant minds of the State unchallenged for general legal ability.

Mr. McEnerney was born at Napa, California, on February 17, 1865, and was graduated at St. Mary's College, San Francisco, in June, 1881. He never attended a law school, but prepared himself for the bar by reading in law offices and at home. He was admitted to the bar of the Supreme Court on March 1, 1886. He commenced the practice at San Francisco in the office of David McClure. In 1887, '88, '89, he continued business alone. In the fall of '89 he formed a partnership with Dennis Spencer, a successful lawyer who had removed from Napa. After two or three years, this firm was dissolved, and Mr. McEnerney went into partnership with George H. Maxwell. This lasted a year or so, when Mr. McEnerney entered the prominent firm composed of ex-Judge John A. Stanly, Geo. R. B. Hayes, and Henry W. Bradley, which now became Stanly Hayes, McEnerney & Bradley. This association also continued for about one year. Since 1895, Mr. McEnerney has been alone in the practice, with offices in Nevada Block, and in the years since passed, on account of his connection with celebrated cases, the public prints have kept his name and his ability before the people.

A San Francisco paper, the *Bulletin*, in August, 1895, declaring that the old question, "Shall the boy go to college?" was being again agitated by the Eastern magazines, took the opinions of well known professional and business men on the subject, among the former being Mr. McEnerney and Mr. D. M. Delmas. We give here the interview with Mr. McEnerney because it reveals not only his opinion, but something of the man himself. (His first name was spelled with more than one "t," which we correct.) It follows:

"Garret McEnerney was unconditionally in favor of boys going to college, and, as he himself is a graduate of St. Mary's, he speaks as one who by experience ought to know best. He is a very young man, has become one of the best lawyers in the State, and is put down by politicians as destined some day to go to the United States senate.

"Mr. McEnerney, who is a genuinely modest lawyer, did not want to talk for publication, and it was only by persistent questioning that he could be induced to express his views. In discussing the collegiate work, he said: 'I regard the university training the same for the mind as a course in athletics is for the prize-fighter. It is discipline, without which a man, especially in the professions, is at sea. Men cannot be too well educated, any more than an athlete can be too well trained.'

"I then asked Mr. McEnerney how he accounted for the vast number of self-made men who are now in control of public affairs in America, and he replied:

"'Of course, many men do succeed, and make great reputations without the training that a college gives, but I believe that each would have done better if he had been better educated. If a horse wins a race with a hundred pounds on his back, it is not on account of the load that he beats his competitor, but in spite of it. Should a man walk from here to San Jose, carrying a heavy burden, he would be better able to reach there more quickly without the weight. My conviction is firm that every one is better for college training.'

"I then broached to Mr. McEnerney the charge that is advanced against colleges, that

Garret W. McEnerney

they create snobs, cads and prigs,—men who are so self-satisfied that they do not even consider it necessary to labor. He would not deny it positively, but said: 'If it is true, it is not the fault of the college course itself, but of other influences.'"

Mr. McEnerney has a vigorous mind. He sees quickly, and can state his views promptly, concisely and convincingly. Hence, his success in the trial of cases, where readiness is required more even than profound learning or pleasing elocution. In arguments before the Supreme Court, where difficult questions of law are to be discussed, after ample opportunity for thought and research has been afforded to counsel, Mr. McEnerney is not surpassed by any lawyer of his years at our bar. He masters the law and the facts; he has something to say which is worth hearing; he says it strongly and pointedly, and when he has said it, he stops. If the case be lost, the fault will lie with the weakness of the case itself, not in the inadequacy of the advocate.

He has won his position at the bar not by trickery, or by "influence," but by the faithful and honorable exercise of his talents, and hence his brothers of the profession admire and respect him, and rejoice in his success.

WILLIAM M. PIERSON.

William Montgomery Pierson's place at the San Francisco bar is among the eight or ten masters who stand at the very front. His entire professional career has been cast in that city. It was begun before he was of age, the legislature, by special act authorizing his entrance to the bar of the Supreme Court, when he was twenty years old. His examination and admission occurred in April, 1862, and now, after a well-sustained practice of thirty-eight years, his capacity was never greater, nor his condition more prime. He seems to look backward and forward upon a far-reaching and pleasing prospect.

Mr. Pierson was born in Cincinnati, Ohio, on the 3rd of February, 1842. His parents were Joseph D. and Catherine (Taylor) Pierson.

The original representative of the family in America was Rev. Abraham Pierson (1608-'78), a native of Yorkshire, England, and a graduate of Cambridge University, who, coming to Boston in 1630, preached for a while at Southampton, L. I., and in 1647 settled in Branford, Conn. He was active as a missionary to the Indians, for whom he prepared a catechism in their language. In 1854 he served as chaplain to the forces sent against the Dutch in New York. Being strenuously opposed to the union of New Haven and Connecticut colonies, he withdrew from Branford in June, 1667, with a large part of the population, and founded Newark, N. J. He enjoyed the warm personal friendship of Governor Winthrop, and Cotton Mather feelingly tells us that "wherever he came he shone." His son, also Abraham Pierson, was the first rector of Yale College (1701-'07); and his descendant, Rev. Hamilton Wilcox Pierson, was a prominent Presbyterian minister in Kentucky, and president of Cumberland College (1859-'62). By the maternal line Mr. Pierson comes of New York Knickerbocker stock, and is a direct descendant of Anneke Jansen, commonly known as Anneke Jans, wife of Everardus Bogardus, and the original owner, by grant from Governor Wouter Van Twiller, of the land now held by the corporation of Trinity Parish. His childhood was passed in New York City, but in his tenth year he went with his parents to California, via Cape Horn, landing in San Francisco July 4, 1852.

Mr. Pierson studied law in the offices of Nathaniel Bennett, Annis Merrill, and Henry H. Haight, and practiced in partnership with Mr. Haight until the latter became Governor of the State in December, 1867. He was a State senator from San Francisco, 1875-1878. He introduced a bill limiting the grounds of divorce to adultery only, which was not passed. Another bill of his to compel newspaper proprietors to retract false and defamatory articles, passed the senate by 25 to 10, on March 13, 1876, Donovan, Edgerton, Haymond, Hilborn, Laine, Rogers, and Shirley being among those voting aye, and Bartlett, Howe and Roach being among the noes. This bill was indefinitely postponed in the assembly on the recommendation of the judiciary committee, John R. McConnell, chairman.

The most important interests with which Mr. Pierson has been professionally connected, are those which are now engaging him, namely, the litigations over the great estate of James G. Fair.

In 1878, when the attorneys of all the San Francisco banks united in a written opinion that the bank commissioners of the State were not vested with power to examine such banks as came strictly in the commercial class, Mr. Pierson led them into a discovery of their error. See the case of Wells, Fargo & Co. vs. E. J. Coleman, et al., 53 Cal. 416,

in which Mr. Pierson appeared for the State in the place and at the instance of the attorney-general.

The following observations from a notice of Mr. Pierson in the Cyclopedia of American Biography are, we think, considerately expressed:

"As a practitioner, Mr. Pierson is noted for sound legal scholarship of the broadest description. His mind is most keenly analytical, and beneath a polished grace of manner he displays an alertness of mind that can discern and take advantage of any weak point in an opponent's case. His oratorical powers are of the highest quality, and few are more powerful with juries. He has made a specialty of corporation law, and has appeared in several cases as attorney for the Southern Pacific Company and other notable companies. In 1888 he began the study of astronomy, and is now one of the most noted amateurs in the country. He owns a fine 8¼-inch reflecting telescope, the largest in the State outside the Lick Observatory, and with it he has made a number of exhaustive and brilliant observations. He was president of the Astronomical Society of the Pacific in 1891, and is a member of the Royal Astronomical Society of England, of the British Astronomical Association, and the San Francisco Academy of Sciences. Mr. Pierson was married in 1853 at San Francisco to Anna Rogers, daughter of Captain Lawrence B. Edwards. They have two sons, Lawrence H. Pierson and Frederick H. Pierson.

In 1890 Mr. Pierson formed a law partnership with Robert Brent Mitchell, under the style of Pierson & Mitchell, which continued uninterruptedly and prosperously for nearly ten years. He is now alone in the practice.

STEPHEN M. WHITE.

Stephen Mallory White, ex-United States senator, and a strong leader of the California Democracy, perhaps the most eminent of the State's native sons, was born in San Francisco on the 19th of January, 1853. The cottage in which he was born stood on Taylor street, between Turk street and Golden Gate avenue. It was built in 1850, and held its ground so late as the year 1881, when, although it was still a fair looking residence, it disappear for "business reasons."

Mr. White's father was William F. White, a San Francisco merchant, who was in partnership with John A. McGlynn and D. J. Oliver. He came with his parents from Ireland when four years old, and was raised on a farm in Pennsylvania and educated at Oxford Academy, New York. He arrived with his wife at San Francisco in January, 1849. Shortly after the birth of his son, he removed with his family to the Pajaro Valley. There he engaged in farming, established a home and raised his children, two sons and six daughters. He had considerable literary ability, and wrote many articles for the public press. He was the author of the large and interesting book entitled "Pioneer Times in California," which he published under the name of "William Gray." He was a member of the constitutional convention of 1878, and was one of the State Bank Commissioners for a number of years by appointment of Governor Irwin. In the triangular contest for State officers in 1879, between the Republicans, Democrats and Workingmen, William F. White was the candidate of the last-named party for Governor, and was second in the race. He died at Oakland, where he had lately taken up his residence, on May 16, 1890, aged 74 years.

Stephen M. White attended a private school in Santa Cruz county from the time he was thirteen years old until reaching sixteen. In his earlier boyhood he had been taught at home by his father's sister, an extremely good woman, of superior and cultivated mind. At sixteen he was sent to St. Ignatius College, San Francisco, where he remained a year and a half. He then went to Santa Clara College, from which he was graduated in June, 1871. He studied law at Watsonville and Santa Cruz. He pursued his studies for about ten months in the office of A. W. Blair in Watsonville, about twelve months with Albert Hagan in Santa Cruz, and some eight months with C. B. Younger in Santa Cruz. He was admitted to the bar of the Supreme Court at Sacramento on the 14th of April, 1874.

After being admitted to practice, Mr. White removed to Los Angeles, and very soon thereafter took a leading place at an able bar. He was district attorney for the years 1883 and 1884, elected on the Democratic ticket. He received more votes than any other candidate on his ticket, either a State, county or township office. A few years after that time the city of Los Angeles, and the county, changed in politics most radically, by an inflow of population from New England, and while Mr. White could not now carry the county, probably, for any political office, he is held in universal regard for his great abilities and unchallenged integrity. He is attorney for Gen-

W. M. Pierson

eral Otis, the proprietor of the great *Times* newspaper, the leading Republican organ of Southern California.

Mr. White is familiarly known in every community in the State, having "stumped" for his party in many campaigns. He is a man of large build, has a powerful and finely-toned voice, is a ready debater, and a masterful public speaker. He has the oratorical gift. He is really a wonderful man in this field, and the man to address great assemblies. We have said that his county changed its politics; but he represented it as State senator from March, 1887, to March, 1889. Governor Bartlett, dying in office on September 12, 1887, Lieutenant-Governor Waterman became Governor. Mr. White having been in march of that year elected by the State senate its president *pro tem.*, now succeeded to the office of Lieutenant-Governor.

He was elected United States senator in January, 1893, at the age of forty, and served a full term of six years, ending March 3, 1899. He was chairman of the Democratic national convention of 1896.

When he was elected a federal senator our legislature was nearly balanced between the two great parties. The senate was Republican, the assembly Democratic. A few Populists in the lower house could turn the scales either way in joint convention. One of them did turn the scales finally, by supporting Mr. White and accomplishing his election by a majority of one. This gentleman was Hon. T. J. Kerns, assemblyman from Los Angeles. He was an old personal friend of the Senator, and his death occurred in December, 1900.

Worthy of special mention, in his faithful service as our senator for six years, is the part he played in the long and hard struggle to secure a deep-water harbor at San Pedro. Mr. White has been a member of the Los Angeles Chamber of Commerce since 1889 (that body was founded in September, 1888), and in a very engaging history of the Chamber, by Charles Dwight Willard, published in 1900, the Senator's work now referred to is gracefully applauded.

After stating that the first board of government engineers appointed to decide upon the best point for a deep-water harbor, in their report of December, 1891, were unequivocally in favor of San Pedro, and advised an appropriation of about $3,000,000 for the undertaking; and that the report of the second board, submitted in the closing days of 1892, reviewed the whole situation, and declared that San Pedro was preferable on every consideration, and estimating the cost of construction at about $2,900,000, the history proceeds as follows:

"A great piece of good fortune fell to Los Angeles at this time, in the election of Stephen M. White to the senate, a man who, by reason of his residence in this city, was thoroughly familiar with all the phases of the harbor controversy, and who was possessed of the brains, honesty and courage that were needed at such a crisis. In the fall of 1895 an organization was formed, known as the Free Harbor League, having for its object the assistance of the Chamber of Commerce in its work for San Pedro. As the United States Treasury was at this time in a depleted condition, it was proposed by the League that the agitation for the outer harbor be laid aside for one season, and that a request should be put in merely for such a sum as would be needed for the partial improvement of the inner harbor of San Pedro, a matter of $400,000. In February, 1896, four delegates, H. G. Otis, W. C. Patterson, W. G. Kerckhoff and W. D. Woolwine, were sent on to Washington to present this matter. They did so, and received assurances from the chairman and other members of the house committee on rivers and harbors that the petition would be granted.

"The people of Los Angeles were greatly astonished some weeks later, when the news came that the bill, which was about to be reported to the house, contained not only the appropriation which had been asked for the inner harbor at San Pedro, but also the sum of $2,900,000 for Santa Monica. * * *

"Upon this the old controversy started up in a somewhat new form, but with more than its ancient virulence. The Free Harbor League protested against any money being spent on the Santa Monica harbor, and demanded that the $2,900,000, if such a sum were possible to be secured, should be devoted to San Pedro. The Chamber of Commerce was urged by the representative of the district (in congress), Mr. James McLachlan to act on the issue, and the directors passed a resolution reaffirming their allegiance to San Pedro. * * The house acted. Then going up to the senate, Senator White succeeded, after a long and determined fight, in which a number of senators discussed the whole question in open session, in getting the item of $2,900,000 placed on the continuing contract list, to be expended on one or the other location, as should be determined by a new board of engineers (this was the third), to

consist of one from the navy, one from the coast survey, and three from civil life, appointed by the President. * * *

"In December of 1896 the new board met in Los Angeles. It consisted of Rear Admiral John G. Walker, A. F. Rogers of the coast survey, W. H. Burr, George S. Morrison and Richard P. Morgan. Their report was filed the following March, and was four to one in favor of San Pedro, the one being Richard P. Morgan.

"One more obstacle remained to be overcome in the determined opposition of General Russell A. Alger, Secretary of War, to the expenditure of the appropriation, and a whole year was consumed in listening to an extraordinary collection of excuses and reasons why the work should not be begun. At last, after he had been forced from one position to another, until the patience of the whole State, and finally of the President himself, was exhausted, the contract was let to the firm of Heldmaier & Neu, of Chicago, and the work begun."

Mr. White is in the prime of his manhood, and in the fullness of activity at the Los Angeles bar. In 1899 he passed through a critical illness, but is fully restored to his natural energies. He is a married man, with several children, the oldest, a son, being now nearly grown to man's estate.

Mrs. White was Miss Hortense Sacriste, an accomplished lady of Los Angeles, of French descent. The marriage occurred at the Catholic Cathedral of Los Angeles, on the 5th of June, 1883.

JOHN D. WORKS.

Judge Works was born in Indiana in 1847. His boyhood was passed on a farm and at a country school. At the age of seventeen he enlisted in an Indiana regiment in the War of the Rebellion, and had nearly two years' service in the field before the conflict ended. He took part in the battle of Nashville, and at the capture of Mobile. Returning to home and school, he turned his mind to the law at the age of twenty. Hon. A. C. Downey, his uncle, who was for six years a Judge of the Indiana Supreme Court, and who was afterwards Dean of the law school at De Pauw University in that state, was then forming a class of law students, and young Works became a member. The course of reading was thorough, and embraced the recitation of forty-two volumes, a quantity largely in excess of what would be enjoined in any western, if not in any eastern law school. He was admitted to the bar in 1868, and shortly joined his father, James A. Works, in practice. He was met at once by a large volume of business, his father being advanced in years and throwing the chief responsibility upon him. The young lawyer was from that time engaged in some of the most important cases. One of these was the case of Merritt vs. Humphrey, the contest of a will. The testator was a very wealthy farmer and during his life boasted to one of the old practitioners of the county that he had never paid out any money to lawyers. The lawyer remarked that every man had to contribute something to the support of the lawyers, and that if he paid nothing during his life, his estate would have to make it up after his death. The farmer died soon after, leaving a will disinheriting a part of his children. The result was a long and expensive litigation, out of which Mr. Works and several other attorneys made good round fees.

Mr. Works also had some public experience before removing to California, having served a term in the lower branch of the legislature, and as member of the judiciary committee of that body.

It was in 1877 that Mr. Works began writing his "Indiana Practice and Pleading." The work is in three volumes. It grew out of the indefatigable author's own private digest. There were already two works of the kind in the hands of the Indiana bar, but this latest soon came to be accepted as indispensable. When the second volume appeared, Mr. L. O. Schroeder, of Vevay, Indiana, wrote to *The Law Counsellor*, that "the work is all that the author's most ardent admirers and sanguine friends could expect or hope for."

Judge Works moved to California in 1883. In April of that year he settled at San Diego. He was soon afterwards employed in a case that became celebrated, that of Burton vs. McDonald et al., involving the title to the Jamul Ranch, a large and valuable tract of land in San Diego county. He represented the widow, and heirs, and administrator, who claimed that the title, which ran to the widow and children, was held in trust by them, and that the property was subject to administration and distribution to the heirs, as against Wallace Leach, who claimed the property under sheriff's sale. The case was decided against the heirs by the court below on all of the material points, but, on appeal, the Supreme Court reversed the judgment on all points, the decision being as broadly in favor of Mr. Works' position, as the judgment of

W. J. Hunsaker

the court below had been the other way. The case went back to the Superior Court of San Diego county, but in the meantime Mr. Works had become Judge Works of that very court. The late Justice McKee was employed to take his place in the case. Upon a second trial Judge Works, of course, not sitting, the case was decided in conformity to the Supreme Court decision.

On October 1, 1886, Judge Works became Judge of the Superior Court of his county by appointment made by Governor R. W. Waterman, to serve out a part of a term. The bar of San Diego county had memorialized in favor of this selection. At the next general election Judge Works was chosen his own successor, the Democrats not placing any candidate in the field. At the end of a year thereafter he resigned because the practice of law offered him much larger compensation.

On the 1st of October, 1888, Governor Waterman commissioned Judge Works a Justice of the Supreme Court of California to succeed, until the next election, Hon. E. W. McKinstry, who had resigned. On November 6, 1888, he was elected to the place by the people, defeating Hon. J. F. Sullivan, the Democratic candidate, notwithstanding the fact that the latter received the astonishing majority of eight thousand in San Francisco, where he was known all his life, and where Judge Works was comparatively a stranger.

On the Supreme Bench Judge Works was exceptionally assiduous, having written more opinions than any of his high associates and these, both in their argumentation and conclusions, have won the pronounced favor of the bar. He wrote the opinion in the celebrated case of Sharon vs. Sharon, in July, 1889, which especially showed him to be a man of discriminating thought. Pending his election, and while he was occupying his seat on the Supreme bench, under a temporary tenure, as stated, he paid no special or noticeable attention to his own candidacy, but gave himself up wholly to the work of the office. After his election he notified his publishers that he could not complete an unfinished law book while on the bench—that the people of the State were entitled to his full services, and should have them so long as he held office. The unfinished work just referred to was a treatise on the "Principles of Pleading and Practice." The object of the work is to give, in a clear and practical form, the general principles of pleading and practice as they exist at the present day, as affected by the rules of pleading at common law and in equity and the codes and statutes of the several states. It is neither a work on common law, equity nor code pleading and practice; but on the general principles as affected by them all; and is adapted to the use of students as well as practicing attorneys.

In May, 1887, at San Diego, Judge Works completed a small work, which has proved a great saving of labor to the profession, entitled "Removal of Causes from State Courts to Federal Courts." He has written another work, entitled "Courts and Their Jurisdiction," which was published by the Robert Clarke Company, Cincinnati, in 1894.

The Judge has a large family. One of his sons is Lewis R. Works, an able lawyer of San Diego, a notice of whom is in this History.

Judge Works removed his residence and main office to Los Angeles on February 1, 1896. At that time he entered the well-established law firm of Wells, Works & Lee. After his advent in the office, Colonel Wells took no further part in its business on account of the poor state of his health, and Judge Works became at once virtually the senior member of the firm. It was not long until Colonel Wells retired from the business in name as well as in fact, the firm name then becoming Works & Lee, which it has been ever since.

The Judge has been engaged since leaving the Supreme bench in all the important water litigation in Southern California.

WILLIAM J. HUNSAKER.

This gentleman is one of the native sons who are doing honor to the State and to the legal profession. He was born in Contra Costa county, in 1855. In 1869 he removed with his parents to San Diego, where he was educated. He studied law there under the direction of Major Chase and Judge Baker, and was admitted to the bar in 1876. He was district attorney of San Diego county in the years 1883-84. He practiced thereafter in partnership with E. W. Britt from 1889 to 1892. In 1892 he removed to Los Angeles, and soon became the attorney of the Santa Fe Railway Company. In 1900 he formed a partnership with E. W. Britt, who had been his associate in San Diego, under the firm name of Hunsaker & Britt. This still exists.

Mr. Hunsaker is among the leaders of the Los Angeles bar. He was connected with the cases growing out of the great railroad

strike of 1894; the Bear Valley foreclosure suit, the Golden Cross Mining Company's litigation, the libel case of Dr. Hearne against M. H. De Young, Robinson against the Ivanpah Smelting Company, and the Southern California Fruit Exchange and Consolidated Forwarding Company against the Southern Pacific and Santa Fe Companies before the Interstate Commerce Commission.

Mr. Hunsaker married Miss Florence V. McFarland on the 27th day of February, 1879. They have a son and three daughters.

Mr. Hunsaker has always taken an active interest in the development of Southern California, and has long been a member of the Chamber of Commerce. He was recently elected chairman of the committee on law of that body, which numbers one thousand of the most progressive and public-spirited citizens of Los Angeles.

S. F. LEIB.

S. F. Leib was born in Fairfield county, Ohio, in 1848. When he was sixteen years of age he entered the army, and at the close of the war he attended the academy near his home. He then went to the University of Michigan at Ann Arbor, and graduated in the law department in March, 1869, just after he was twenty-one. In that year he came to California and located at San Jose. He became a partner in the firm of Moore & Laine, the firm name then being Moore, Laine & Leib, and afterwards, upon the admission to the firm of D. M. Delmas, the firm name was Moore, Laine, Delmas & Leib. All of these have long been justly celebrated names. Later the partnership was dissolved, and for over twenty years past Mr. Leib has continued the practice of law by himself.

In the year 1889 he was appointed as one of the trustees of the Leland Stanford Junior University, and in 1898 he was appointed president of the board of trustees of that university, and still holds that position.

Mr. Leib is one of the strong men of the bar of the State, and universally so regarded by the profession as well as by the people. He is a lawyer of broad knowledge and capacity, of deep reflection, superior judgment and deliberate action. His prosperity has been unbroken from the commencement of his professional career.

E. R. TAYLOR.

The distinguished dean of Hastings College of the Law, Edward Robeson Taylor, as original and fecund a mind as the annals of our bar disclose, was born in Springfield, Illinois, on the 24th of September, 1838. His father was Henry West Taylor, a native of Delaware, and his mother, Mary Thaw, was born in Philadelphia, Pa. He was educated at Kemper School, Booneville, Mo., and at Toland Medical College, San Francisco, now the medical department of the State University. He arrived in California on the 4th of February, 1862. He was granted the degree of Doctor of Medicine by the college named on December 2, 1865. From December, 1867, to December, 1871, he was private secretary to Governor Henry H. Haight. He was admitted to the bar by the Supreme Court in January, 1872, and practiced law in San Francisco from that time until his retirement, to take the place of dean of Hastings College of the Law, in May, 1899. In October, 1879, he was admitted to the bar of the Supreme Court of the United States, and practiced thereafter in that highest tribunal and in all the federal courts in California.

Doctor Taylor, for so he is universally called, was a member of the third board of freeholders in 1886 to frame a charter for San Francisco, which proposed charter was defeated; and of the fifth board of freeholders, 1898, that framed the existing charter of that city. He has been a member of the board of trustees of the San Francisco Public Library since June 7, 1886, and of the board of trustees of the San Francisco Law Library since March 30, 1895; Vice-President of Cooper Medical College since its foundation, in 1882, and President of the San Francisco Bar Association for 1890, 1891, 1894 and 1895.

During all this period he was very actively occupied with his professional business. He was a conspicuous figure in the long contest over the inheritance of the great estate of Thomas H. Blythe, being the attorney, with Harvey S. Brown, for the Williams claimants, and also the appointee of the court to represent absent heirs generally. He was also prominently connected through a long period with the litigation over the "Pueblo Survey" of San Francisco.

Among Dr. Taylor's published writings are the following:

Paper on *Chronic Myelitis*, published in August, 1869, number of the *Pacific Medical and Surgical Journal*.

Paper on a *Case of Scirrhus of the Pancreas*, in the April number, 1866, same journal.

Paper on the *Pathology of Bright's Disease*, published in the December, 1869, number of the same journal.

Prize essay *On the Chemical Constitution of the Bile*, awarded by the American Medical Association, and printed in 1871 in their proceedings.

Paper on *Medical Education*, read before the State Medical Society of California, October 2, 1872, and published in their proceedings for that year.

Paper on the *Establishment of the Boundaries of the Pueblo Lands of San Francisco*, in January number, 1896, of the *Overland Monthly*.*

Sonnets of Jose Maria de Heredia, rendered into English; published by William Doxey, San Francisco; two editions, 1897 and 1898.

Moods, and Other Verses, published by Shephard & Elder, San Francisco, 1899.

Memories, and Other Verses, printed in December, 1900, for private circulation.

Dr. Taylor became acquainted with Henry George when he was private secretary to Governor Haight, in 1870. George was editing the *Sacramento Reporter*, a Democratic paper. Henry George, Jr., in his life of his father (1900), states that the two men "afterwards grew intimate, until, when "Progress and Poverty" was being written, Taylor was chief friend, critic and adviser."

There are many pleasing references to Dr. Taylor in the "Life of George." George began writing his great book on the 18th of September, 1877. His purpose was to write a magazine article—an inquiry into the cause of industrial depressions, and indicating a remedy. "When the article was in form, he read it to his close friend, Dr. Edward R. Taylor, who was now Governor Haight's law partner in San Francisco. Taylor was much impressed; so much so that he urged George to reserve publication of the article, and to give the subject a more extended treatment." (Page 292.)

Mr. George took the advice, and expanded his article into a book. On March 26, 1878, George delivered a pay lecture in San Francisco, at the request of the Land Reform League of California, which had just been organized to propagate his ideas. In June of the same year he lectured on "Moses" before the Young Men's Hebrew Association. This created much surprise and delight. At its close, Dr. Elkan Cohn, the rabbi, asked of the chairman, Max Popper: "Where did you find that man?"

"Nevertheless, Dr. Edward R. Taylor," remarks the author of the life, "who also had heard the address, observed to Mrs. George, as they walked to a car on the way home, 'Considered in itself, that lecture was a fine effort, but Mr. George is writing a book that is so much superior in importance that to stop for matters like this is like wasting time.'"

On page 308 the same author, after naming close friends with whom the philosopher advised in writing "Progress and Poverty," among the number being Judge James V. Coffey and Judge James G. Maguire, says: "But Taylor was the mainstay, the only man who read all of the manuscript, and subsequently all of the proofs. * * * To him George made constant reference, and he responded with tireless zeal." "During all this labor of making plates," to quote further, "Taylor was of inestimable service to his friend, encouraging and suggesting, reading proofs, and even, like George, going back to the printer's case to set a few 'sticks' of type."

George made written and happy acknowledgment of his great obligation to Dr. Taylor, "not only as compositor, proof-reader, critic and poet, but still more by the clearness of his judgment, the warmth of his sympathy, the support of his faith."

Dr. Taylor married in San Francisco, on the 20th of April, 1870, Agnes Stanford, a niece of Leland Stanford. Five children have been born to them, of whom two are living, namely: Edward DeWitt Taylor, born June 17, 1871, and Henry Huntly Taylor, born December 25, 1879.

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*Dr. Taylor was the main factor as counsel against the Stratton survey, and was personally cognizant of what he set down in this valuable article.—EDITOR.

W. S. GOODFELLOW.

William Scott Goodfellow was born at Auckland, New Zealand, on the 16th of September, 1850. His father was a native of Scotland, and a farmer, and held the office of magistrate. Mr. Goodfellow was educated in Scotland, at the Edinburgh Collegiate School, and the Royal High School of Edinburgh. He read law in the University of Cambridge, and was admitted to the bar by the Inner Temple in London, in 1873. He came to San Francisco in

February, 1875, and in April, 1875, was admitted to the bar of the State Supreme Court.

Mr. Goodfellow practiced alone in San Francisco for ten years, when he entered into partnership with John B. Jarboe and Ralph C. Harrison, under the firm name of Jarboe, Harrison & Goodfellow. This association continued for five years, when it was dissolved at the close of 1890 by the election of Mr. Harrison to the Supreme bench. He has had no other partnership.

Mr. Goodfellow was not long in getting into a good practice at the bar of our great city. He is a man entirely without pretension. His law reading has been very wide, his perception of legal principles is very clear. He is extraordinarily alert and strong in apprehension.

An old legal friend of ours, who was so pleased with the official report of a certain Supreme Court decision that he called it "a beautiful decision," would call Mr. Goodfellow a "beautiful" lawyer. His presentation of a complicated case is certainly a beautiful thing to see. He has now for many years had in professional charge the largest interests and been the legal adviser of some of the most "solid" men. In addition, great causes which have engaged the courts and filled the public mind, have made his name familiar over a wide field, and he is acknowledged by men of all classes, including those observant minds that best adorn the bench, to be one of the cardinal exponents of the legal profession in California.

Mr. Goodfellow rested from his labors in 1900, to make a tour of the world. He returned, to take up business in increased amplitude. He is a man of average stature, of quick movement, and pleasant address, but so busy as to take on a business air. Just one-half of his fifty staunch years have been spent in this State, and there is promise of long life and that "autumn will come in yellow clad, as though he joyed in his plenteous store"—for Mr. Goodfellow, with all his affairs and all his cares, never lets them work mischief for him, but "recruits" in season. For all these twenty-five years he has made his home in Oakland. He has never had anything to do with politics. "I never held an office," he said to us years ago, "and I never intend to."

Not long after his location here, Mr. Goodfellow made a visit to England and married a young lady whom he had long known. They have five children, all born in California.

——*THE EDITOR.*

FEDERAL AND STATE JUDICIARY--PAST AND PRESENT

FEDERAL and STATE JUDICIARY—PAST and PRESENT*

JOSEPH McKENNA.

Hon. Joseph McKenna is not sundered from the State because he is a Justice of the United States Supreme Court. Independent of his sphere at Washington City, he is Presiding Judge of the United States Circuit Court of Appeals for both the districts of California—Northern and Southern. The Judges of each circuit and the Justice of the United States Supreme Court for the circuit constitute a Circuit Court of Appeals. Justice McKenna has the Ninth Judicial Circuit, which takes in, in addition to California, Arizona, Nevada, Oregon, Washington, Idaho, Montana, and Alaska. The Circuit Judges who sit with him on his official visits to San Francisco are Hon. William B. Gilbert of Portland, Oregon; Hon. Erskine M. Ross of Los Angeles, and Hon. W. W. Morrow of San Francisco.

Judge McKenna was born in Philadelphia, Pa., August 10, 1843. He attended St. Joseph's College of that city, but was not graduated, as his parents brought him with them on their removal to California in 1855, when he was twelve years of age. They settled in Benicia, where he continued his education at the public schools, and at the Collegiate Institute. At the institute he was prepared for the bar, and was admitted to practice by the State Supreme Court in 1865. He was twice elected district attorney for Solano county, and served four years, beginning in March, 1866.

At the twenty-first session of the legislature he represented his county in the assembly—December, 1875, to April, 1876. The legislature at that session was Democratic overwhelmingly in both branches. Judge McKenna was the Republican candidate for speaker of the assembly, and received twelve votes, to sixty-one for Hon. G. J. Carpenter of Placerville.

Judge McKenna practiced law at Fairfield, the Solano county seat, for about eight years after this, until he took his seat in the national house of representatives. He was elected to that body four times consecutively, from the third district. His period of service therein was from March 4, 1885, until in the year 1892. His last term would have ended March 3, 1893, but he resigned, to accept the position of United States Circuit Judge for the District of Northern California, to which he was appointed by President Harrison. He took that bench as successor of Lorenzo Sawyer, who died in September, 1891, after filling the office for nearly twenty-two years.

While the Judge was on this bench, Leland Stanford died (June 21, 1893,) and when the will of the millionaire senator was opened, it was found to contain a contingent proviso,

*It was found that many of the men who have occupied the bench in California, including some of the most distinguished of our jurists, could be spoken of more appropriately in other divisions of this History. Accordingly on other pages (see index) there appear sketches of Lawrence Archer, Joseph G. Baldwin, Isaac S. Belcher, Nathaniel Bennett, M. C. Blake, John S. Chapman, Alexander Campbell, John Currey, Wm. P. Daingerfield, Stephen J. Field, John S. Hager, S. C. Hastings, Solomon Heydenfeldt, Ogden Hoffman, Jos. P. Hoge, Matt F. Johnson, Hugh C. Murray, Jos. W. McCorkle, E. W. McKinstry, O. C. Pratt, Tod Robinson, E. D. Sawyer, Lorenzo Sawyer, Niles Searls, James M. Shafter, Oscar L. Shafter, John R. Sharpstein, David S. Terry, Peter VanClief, Walter Van Dyke Wm. T. Wallace, James A. Waymire, E. D. Wheeler, John D. Works, and Selden S. Wright.—EDITOR.

whereby Judge McKenna was to become one of the executors in the event that Mrs. Stanford resigned, or for any reason became incapacitated. Between the dates of the filing of the will in the San Francisco Superior Court and its admission to probate, there was much speculation among lawyers and others as to the course the Judge would take in this matter. He filed a renunciation on the same day on which the will was proved. He gave to a reporter his reasons, as follows:

"In the first place, it would have been a physical impossibility for me to have discharged the duties of both positions if the contingency had arisen for making the effort. For that reason I deemed it advisable to decline, in advance, a trust that I felt I could never properly carry out.

"Furthermore, it might be deemed incompatible with my office as United States Judge to maintain a relationship that would give possible ground for comment if I should participate in the hearing of cases where the Southern Pacific Company or the Stanford estate held interests.

"If you ask, did I think the contingency indicated in Senator Stanford's will was sufficient to disqualify me, I answer, no. The contingency was very remote—too remote to amount to a legal objection; yet, to avoid the possibility of criticism in the mind of any person, and to satisfy my own idea of what was proper in my situation, I took this action. Even if Mrs. Stanford had seen fit to ask me and the other gentlemen to act as trustees or executors, as contingently provided in the will, I could, no doubt, have asked some other Judge to sit for me when suits for or against the Stanford interests were being tried. I could have done that, but I would not have cared to do so, and in view of the remote probability of my being called on to actively take part in the administration of the Stanford estate, I thought it best to sever even the slight association with that estate which in the mind of the public I might be considered to hold.

"Mrs. Stanford has seen fit to assume her position as sole executrix, wisely, I think, and there is no reason to doubt that she will live to carry out the provisions of the trust without requiring the assistance of any of the gentlemen so kindly mentioned in the Senator's will. She is in robust condition, mentally and physically, and fully equal to the task of completing the terms of the will.

"Mrs. Stanford knew of my intention from the day that the will was opened, as did also her lawyers, and they understood the motives that led me to form my resolution. They knew that it was no lack of appreciation of the high esteem which Senator Stanford manifested for me in designating me in his will as a contingent executor. It was only because, as I have already indicated, my own views on the subject carried my mind to the conclusion on which I acted.

"My renunciation of the right to serve as executor was filed on the 17th, the very day that Mrs. Stanford proved the will and had it admitted to probate. I could not offer to renounce my right until after the will had been established, and as I did not have possession of the will nor the control of it in any way, it was not within my power to hasten its legal acceptance."

The interviewer adds these observations which are of interest, if not in close connection with our subject:

"The declination of Judge McKenna to assume the trust imposed on him by Senator Stanford's last will and testament still leaves a trio of able financiers who may be called on to administer the Stanford estate in the event that Mrs. Stanford should die, resign or for any reason become disqualified or incapacitated. These gentlemen are D. O. Mills of New York City, a near friend of the dead senator; Captain N. T. Smith, at present treasurer of the Southern Pacific Company, and Stephen T. Gage, for years Senator Stanford's trusted adviser and confidential agent. If at any time Mrs. Stanford should wish to relieve herself in any degree of the burden of the vast trust imposed by her husband's will, she would be at liberty to seek the counsel and advice of these gentlemen, ripe in years and rich in experience with such subjects as would be taken to them for their consideration and judgment.

"'The condition of the estate is so admirable,' said one of Mrs. Stanford's friends yesterday, 'that it can be handled without the slightest difficulty or friction, notwithstanding its vast proportions, and Mrs. Stanford is conceded to be wholly able to do all things needful for fulfilling the requirements of the trust. She, better than all others, knows the plans and desires of Senator Stanford touching the Leland Stanford Jr. University and its future management. Therefore, she, better than all others, is qualified to achieve the objects of his wishes in this regard.'"

In March, 1897, Judge McKenna resigned the Circuit Judgeship to accept the office of United States Attorney-General in the Cabinet of Pres-

ident McKinley at the beginning of that President's term. On the eve of his departure for Washington City, a banquet was given to the Judge by prominent citizens. The editor of this History has preserved his copy of the printed invitations sent out, as a memento of a very delightful and interesting occasion. It is as follows:

PALACE HOTEL,
SAN FRANCISCO, Feb. 15, 1897.

Dear Sir: The citizens of California will give a banquet at the Palace Hotel, on Tuesday evening, 23d inst., to Hon. Joseph McKenna, U. S. Circuit Judge, in appreciation of the compliment paid this State by his appointment to a Cabinet position; and in testimony of his worth as our most acceptable and honored representative.

Your presence on that occasion, with participation in the festivities of the hour, is cordially invited.

By request of the Committee on Invitation.
HENRY P. SONNTAG, *Chairman.*
BARRY BALDWIN,
A. A. WATKINS,
CORNELIUS O'CONNOR,
HUGH HUME,
Invitation Committee.

On December 16, 1897, while filling the office of attorney-general, Judge McKenna was appointed by President McKinley an Associate Justice of the Supreme Court of the United States, to succeed Justice Stephen J. Field, retired. He took his seat on that highest bench on January 26, 1898. He resides with his family in Washington City, and in seeking a home location, found an agreeable one on California avenue.

WILLIAM W. MORROW.

The Judge of the United States Circuit Court at San Francisco was born July 15, 1843, in Wayne county, Indiana. He was, like so many of our subjects, a farmer's son, his father dying when William W. was nine years old, and leaving his family, consisting of the boy and his mother, in straitened circumstances. For some five years the lad worked on farms in Illinois, attending school in the winter months. He also managed to secure private instruction in modern languages, Latin, mathematics and engineering, intending to follow the last named pursuit as the business of his life. His ancestors, whom he can trace for six generations, went from Scotland to Ireland, where his father was born, and whence he emigrated to America in 1835. He (the elder Morrow) was a correspondent of the London *Times*, which position he surrendered to go to farming. He died in 1852.

After devoting a year to apprenticeship to a mechanical trade in Ilinois, young Morrow removed to California, arriving in September, 1859. He settled at Santa Rosa and worked at his trade, resuming also his studies, to which he gave his evening hours. For a short period he taught school.

In April, 1862, when he was not quite eighteen, he went, with a party of young gold hunting adventurers, from Santa Rosa to Oregon. Their objective point was the placer mining region of Idaho, but having lost their way and wandered for weeks through a rough and dangerous country, they brought up on Day river, where they discovered rich placers. The news of their "find" brought a rush of miners, and Canyon City, where Joaquin Miller was afterwards County Judge, quickly sprang into being.

In the fall of 1862 Mr. Morrow returned with some "dust" to Santa Rosa, and in the following January he went east, with the intention of entering some college, and taking a complete course of study. While visiting Washington he was appointed by Secretary Chase to a position in the treasury department, which he held for two years. He joined the National Rifles, and took part in army operations in and around Washington in 1863-4. In January, 1865, he was by Mr. Fessenden, then secretary of the treasury, appointed a special agent of the treasury department, and in that capacity brought to San Francisco a shipment of $5,000,000. Having passed his twenty-first year, he abandoned his collegiate education and determined to remain in California. For four years thereafter he was employed in various capacities in the treasury and internal revenue departments in San Francisco. During this period he gave his spare hours to the study of law, which he had commenced in Washington. He was admitted to the bar of the Supreme Court of this State in 1869.

He was very soon called to official life. In 1870, Hon. L. D. Latimer, United States District Attorney for California, appointed him his assistant, which post he held during Mr. Latimer's term of four years. The two gentlemen had met years before at Santa Rosa and had become firm friends. They continued to be associated in business during the whole period of Mr. Morrow's professional life, having formed a private law partnership when they walked out together, arm in arm, from the office of the United States district attorney.

In the early eighties, Judge Morrow was for some time, the regular counsel for the Board of State Harbor Commissioners, a position of grave responsibility, the litigation on the part of the State affecting the harbor and water front being all under his direction.

In 1879 Mr. Morrow was unanimously nominated by his party for State senator from the Ninth district of San Francisco but was defeated by a few votes by Robert P. Hastings. The district was and is opposed to him politically. In 1878 he ran on the Non-partisan ticket for delegate to the Constitutional Convention, and with his whole local ticket met defeat by the Workingmen's mushroom party. In 1879 he was chosen chairman of the Republican State central committee, a place which he held for some two years, evincing marked executive ability.

Judge Morrow was elected to the national house of representatives three times in succession, as a Republican, from San Francisco; and served three full terms, from March 4, 1885, to March 4, 1891. He and Henry Edgerton had been defeated for congressmen at large in September, 1882, by Charles A. Sumner and John R. Glascock, Democrats.

At the close of his congressional service in 1891, Judge Morrow resumed law practice in San Francisco in partnership with Hon. Frederick S. Stratton (Morrow & Stratton). This association lasted hardly a year when the eminent jurist, Ogden Hoffman, United States District Judge at San Francisco, died (August, 1891), and our subject, who, while Assistant United States District Attorney, had tried so many cases before him, shortly after took his place, by appointment of President Harrison.

Hon. Joseph McKenna was Judge Morrow's colleague in congress during the whole of the latter's service there. He was appointed, also in 1891, to the bench of the United States Circuit Court at San Francisco. When Judge McKenna was called into President McKinley's cabinet in the spring of 1897, the San Francisco Bar Association, at a largely attended meeting, unanimously passed resolutions recommending District Judge Morrow for the Circuit Judgeship. No other name was suggested. The appointment soon followed.

The Judge was permanently separated from his mother by the War of the Rebellion. He was a Republican child of a slave-holding mother. The latter, in 1856, returned from Illinois to her native county, Caldwell, in North Carolina, where she had an inheritance. During the war, Judge Morrow, while in Washington, endeavored to get his mother through the military lines, and obtained a special pass from President Lincoln. This paper was sent under a flag of truce to the Confederate authorities, but the lady never received it. After being subjected to great vexation and hardship in Richmond, she was compelled to return home and Judge Morrow never saw her again. In 1875 he visited her grave and erected a monument to her memory. The man who drove him from the railroad to the little town where she had lived referred him to a distinguished darky as knowing all about his maternal relatives. This ex-contraband had been elevated to the bench, was a leading citizen and not without hopes of an election to congress. On being introduced to Judge Morrow, he said, "Why, I used to belong to you." "Were you one of my mother's slaves?" asked Judge Morrow. "Yes, sah," said the citizen.

The old lady had by her last will and testament left her negroes to her Republican anti-slavery son. It was like putting "a barren scepter in his gripe."

We took occasion when Judge Morrow was at the bar to refer to him as follows:

He is a man of large stature, superb, sinewy frame, and robust health. He is scrupulously neat in dress, methodical in his plans and habits, simple in his tastes, and stainless in his private life. His personal acquaintance is very extended, and he enjoys popularity to a degree of which few men can boast. In preparing and trying a case he is painstaking, patient and thorough; in argument, plausible and full; in speech, facile and correct. He invariably wins the respect of court and jury, for the sincerity of his motives is always conspicuous. He rarely takes up the weapons of wit, invective or satire, but "speaks forth the words of truth and soberness" effectively and to the point. His "staying" qualities are good, and when occasion calls for the effort, he can hold the floor, and show his right to it, for hours at a time, as in the case of Salvador. He is entirely void of affectation, and eschews "ad captandum." He is a plain, prudent, earnest, resolute man, a fine type of American character—*sans peur et sans reproche.*

Judge Morrow married in 1865, at Santa Rosa, Miss Maggie Hulbert, daughter of a Methodist clergyman of that place, and has two sons and a daughter.

ERSKINE M. ROSS.

Erskine M. Ross of Los Angeles, United States Circuit Judge since 1895, was born in Culpepper county, Virginia, June 30, 1845, the son of a planter. He attended school in his native county, and afterwards at the Virginia Military Institute at Lexington. At the age of ten, he entered a military school at Culpepper Court House, where he was a pupil for about five years, or until the summer of 1860, when he became a cadet in the Military Institute. This school was modeled after West Point. The Civil War breaking out in the following spring, young Ross, who was not old enough to be mustered in the army, acted as lieutenant in various commands, and was in several battles on the Confederate side. In 1863, in the middle of the war, he returned to the institute to gratify his father, but in 1864, the corps of cadets was ordered out, and took part in the battle of New Market, losing fifty-five of their number in killed and wounded, out of 190 in the corps. The war closed, young Ross went back to the institute, and was graduated in 1865. He came to California in 1868, and settled in Los Angeles, where resided his uncle, Hon. Cameron E. Thom, who had been State senator at the sessions of 1858 and 1859, and was a prominent lawyer. The young Virginian entered his uncle's office and studied law with great zeal for two years, when the old District Court admitted him to practice. It was not until April, 1875, that he was admitted to the bar of the State Supreme Court, but the intervening period was spent in profitable practice in the local tribunals in partnership with Mr. Thom. Their business was of a general character, including land suits of magnitude. The junior partner improved his opportunities, was diligent in business, and was rewarded with professional fame and financial prosperity at an exceptionally early age.

The big law fees come late in life, as a rule. They come from millionaires and great corporations, who have vast interests at stake—who demand the best service of experienced men. It is seldom a lawyer acquires wealth at an early age. Judge Ross furnishes an exception to the rule.

At the first election under the present State constitution Judge Ross was chosen, on the Democratic ticket, a Justice of the Supreme Court. His age was then thirty-four years, and he had not passed the usual ordeal of probation upon inferior benches—indeed, had not held an office of any kind. He stepped from the ranks of the profession to that high judicial station. Upon the organization of the new Supreme Court he drew a three years' term. In November, 1882, he was elected for a full term of twelve years. On October 1, 1886, he resigned the office, and on January 13, 1887, he was commissioned by President Cleveland United States District Judge for the southern district of California. He qualified on the 5th of the following month. He continued in that office until he took the bench as United States Circuit Judge of the same district, to which he was also appointed by President Cleveland in the latter's second term. His commission as United States Judge was dated February 22, 1895, and he qualified on March 5 following.

Personally, Judge Ross is under the average height; he looks younger than he is, although he has hardly passed his prime. He is a studious, reflective man, with some reserve, yet of polished address. The bar entertains the highest regard for him as a man and as a jurist. His written opinions evince good ability, excellent powers of expression, a clear head, and the true judicial temper. His enlightened firmness in the discharge of judicial duty and responsibility was well evidenced during the great railroad strikes of 1894. He is a member of the Episcopal church. He is a man of family, having married Miss Ynez Bettis, of Los Angeles, in 1874. Their son, Robert Erskine Ross, was born March 30, 1875. He owns a fine residence in that city, and one of the largest and most profitable orange orchards in the State.

The Judge established his place, Rossmoyne, on the San Rafael Rancho, in Los Angeles county, about the year 1877. He cleared the land and planted an orange orchard, covering seventy acres. He also planted about eighteen acres in olives, and some lemons. It has become a very beautiful place, of bountiful yield.

OLIN WELLBORN.

The Judge of the United States District Court for the southern district of California was born at Cumming, Georgia, June 18, 1843. He was educated at Emory College, in that state, and the University of North Carolina. When the Civil War broke out he was eighteen years old, and enlisted in the Confederate army as a private. During the conflict he was promoted to lieutenant, and then to captain. In

1865 he was admitted to the bar at Atlanta, Georgia, and practiced there until 1869. He then removed to Dallas, Texas, where he followed law practice. He represented the Dallas district in the national house of representatives, as a Democrat, for four successive terms, or eight years.

Having removed to San Diego, California, at the end of his service in congress, he practiced law there until 1893. He then settled permanently at Los Angeles. President Cleveland appointed him to his present high office on March 1, 1895. Besides his legal attainments and judicial and legislative experience, Judge Wellborn is a very effective and entertaining speaker. He is fluent and full of anecdote. He spoke on the stump for his party in California in the Presidential campaign of 1888. He has a wife, two sons and two daughters and owns his home in Los Angeles.

J. J. De HAVEN.

John Jefferson De Haven, United States Judge for the northern district of California since June 8, 1897, was born at St. Joseph, Missouri, March 12, 1845. He was brought to California in infancy (1849). He grew to manhood in Eureka, attending the public schools, and was admitted to the bar in 1866. In the next year, at the age of twenty-two he was elected district attorney of Humboldt county, and served the term of two years. He represented his county in the assembly at the eighteenth session—December 6, 1869, to April 4, 1870, being one of twelve Republicans in a body of eighty members. In the middle of the session he was added to the judiciary committee on motion of the Democratic chairman, Joseph Naphtaly, of San Francisco. He was in the State senate at the next two sessions, 1871-75.

Judge De Haven's public service has had little interruption since he reached man's estate. In 1878-80 he was city attorney of Eureka. In 1882 he ran for congress the first time, and was defeated. For the period of 1884-89, inclusive, he was Superior Judge of Humboldt county. He was elected as a Republican to congress from the first district in 1888, his term being from March 4, 1889, to March 4, 1891, but he resigned in the fall of 1890 to accept the Republican nomination for Associate Justice of the Supreme Court for an unexpired term of four years. He was elected, and at the end of four years, in 1895, fixed his residence at San Francisco, resuming the practice of law in partnership with S. C. Denson, once Superior Judge of Sacramento county.

On June 8, 1897, Judge De Haven became, by appointment of President McKinley, Judge of the United States Court for the northern district of this State. He took his seat on that bench on June 17 of that year. The Judge is a man of family, having married Miss Zemah Jane Ball on June 24, 1872.

CHIEF JUSTICE BEATTY.

The distinguished Chief Justice of the California Supreme Court was born at Monclova, Lucas county, Ohio, on the 18th of February, 1838. Although born in Ohio, he has always considered himself properly a native of Kentucky, because his father was a citizen of Kentucky, and he was taken to that state at a very early age, and resided there until he was fifteen years old, when he followed his father to California. He arrived in California in March, 1853, and lived in Sacramento until 1855, when he returned to the eastern states, attended a preparatory academy for a year, and then spent two years at the University of Virginia, during the sessions of 1856-57 and 1857-58. In September, 1858, he returned to Sacramento, California, studied law in his father's office, and was admitted to practice in the Supreme Court of California, at the January term, 1861. In the spring of 1863 he went to Lander county, in eastern Nevada. When Nevada was admitted to the Union as a state, in 1864, he became Judge of the District Court in Lander county, and held that office under successive re-elections in Lander and White Pine counties, until the 1st of January, 1875, when he became an Associate Justice of the Supreme Court of Nevada, holding that office from 1875 to 1878, inclusive, and the office of Chief Justice during

the years 1879 and 1880. He was re-nominated, but was defeated for re-election. At the close of his term he took up his residence in Sacramento, practicing law there until January, 1889, when he became Chief Justice of the Supreme Court of California, being elected to fill the balance of the unexpired term of Chief Justice Morrison. He was re-elected in 1890 and holds the office at present under that election. His term will expire in January, 1903.

During the time that Judge Beatty was District Judge in Nevada a great many cases were tried before him, the most important of which were mining cases. The only two of any especial importance were the two cases known as the Eberhardt case, tried at Austin, in 1868, and the Kentucky vs. the Raymond & Ely case, tried at Pioche, in September and October, 1873. These cases were important on account of the great value of the property involved, and the eminence of counsel engaged on either side, as well as the time consumed in the trials and the distinguished reputation of the experts who testified, but the cases otherwise presented no features that were not common to many others of less importance. Probably, as the books run, the Chief Justice never tried any case that could be properly denominated a *cause celebre*.

During the time he occupied the District bench of Nevada there was an immense amount of litigation in the District Courts of Lander and White Pine counties, upwards of six thousand cases going to judgment during the ten years he was on the bench, of which probably about one-third were contested cases. There were about one hundred and twenty appeals to the Supreme Court from the judgments of the Chief Justice, and he was reversed about thirty-five times.

As exemplifying the quality of the Chief Justice as an exponent of legal science, perhaps the case of Havemeyer vs. Superior Court, etc., is to be pointed to above many others which bear the peculiar impress of his genius. The case is reported in 84 Cal. 351. It grew out of the suit of the State against the American Sugar Refining Company. It was tried in the Superior Court of San Francisco, Hon. William T. Wallace hearing and deciding it. The judgment declared a forfeiture of the defendant company's corporate franchise, and imposed the statutory penalty of $5,000. An appeal was taken, a "stay-bond" of $12,000 being given. Notwithstanding the appeal, an application was made by the other side for the appointment of a receiver. Judge Wallace appointed such receiver, in the person of the respected and able lawyer, since deceased, Patrick Reddy; and directed the latter to take possession of the defendant's property, especially mentioning in his order certain premises as part of such property.

Havemeyer and others claimed to have purchased and taken into possession the very property so specifically mentioned in Judge Wallace's order. They petitioned the Judge to rescind his order, and to direct his receiver to proceed by action to recover the specified property, in case he believed it to be the property of the corporation and subject to the jurisdiction of the court in the main action.

Judge Wallace denied their application, and they prayed the Supreme Court for a writ of prohibition against the Superior Court, Judge Wallace, and Receiver Reddy. This matter in the Supreme Court was ably and learnedly argued by counsel on both sides. Judge Wallace himself appeared and made an argument —a motion having been pressed to punish him and Receiver Reddy for contempt in disregarding the alternative writ of prohibiton issued by the Supreme Court, which motion and the application for a peremptory writ of prohibition were heard at the same time.

Chief Justice Beatty delivered the opinion of the court. It was concurred in by five other justices—all who had taken any part in the hearing of the case. For clear statement of facts and the legal propositions involved, the opinion is a model. It is an exhaustive discussion of the principles of law and the statutes and decisions bearing upon the rights and obligations of stockholders in corporations, in cases of this kind; the power of the court to appoint a receiver in the case at bar, and the attempt of Judge Wallace to dispose summarily of the property claimed by the petitioner, in a suit to which they were not parties.

The decision was that the lower court had no power to appoint a receiver in that case, that its order naming Mr. Reddy receiver was void, and that the effort to deprive petitioners of the property in dispute, of which they were in possession, claiming to own, was, in violation of constitutional rights, because it would have been depriving them of property without due process of law.

Incidental questions of procedure were handled in a masterly manner in this opinion of

the Chief Justice, as well as the suggestions presented by the respondents, that the petitioners were "bad men," and therefore should be denied the equal protection of the laws. Upon the question of contempt the decision of the court was against Judge Wallace and his receiver. A nominal fine of $10 was imposed upon each, it being recognized that the "offenders," in their violation of the order of the court, had acted in "good faith."

This was a case, it seems in which *ignorantia legis excusat.*

We recall a discussion which we had over this able judicial paper and its author, with that observant and critical mind of the San Francisco bar, Mr. Henry H. Reid. "The opinions of Chief Justice Beatty," said Mr. Reid, "are in general characterized by clear statement and cogent reasoning from legal rules and adjudicated cases. They command the respect of those who are compelled, sometimes, to dissent from the conclusions drawn. Among the best examples of Judge Beatty's capacity for lucid statement of facts, and of legal exposition is his opinion in the case of Fox v. Hale & Norcross Silver Mining Company, 108 Cal. 369. His description of mining processes is a delight to the reader, who has a general knowledge of the subject, but who is yet not an 'expert' in that line; while his statement and application of the law have been questioned only by those whose misfortune it has been to be on the losing side."

On the subject of our mining laws and customs, the Chief Justice is frequently referred to, and quoted, by Judge Davis in his elaborate article in this History.

In the summer of 1897, the San Francisco *Examiner* interviewed many public, and public-spirited, men, on the subject of their boyhood days, and as to what lingered in memory as the principal charm of their childhood—that was the idea, we forget the journal's phraseology. On this head see the sketch of General Barnes. Chief Justice Beatty's response, which we pigeon-holed at the time, was as follows:

"When I was a boy I lived in the country and liked hunting and fishing better than anything else. To do one or the other was by long odds my first choice whenever I had a whole day, or even a part of a day to myself. If for any reason fishing and hunting were both out of the question (on account of bad weather or a crippled gun, or exhausted ammunition), I cannot remember any other sport or occupation that was a second choice. It was anything to get through the day, and generally it was a dull day at the best. This statement should be qualified by saying that it relates to ordinary times, and does not embrace those rare occasions when the circus or traveling menagerie came to town. Then, of course, the thing was to go out on the road to meet the circus, escort it into town, superintend the erection of the tent, go to the afternoon performance, and, if the necessary financial arrangements could be effected, to take in the evening performance also."

JACKSON TEMPLE.

Jackson Temple, a long-ago Justice of the Supreme Court, and now a member of that tribunal, was born in Franklin county, Massachusetts, August 11, 1827. He was a farmer's son; attended the common schools of Berkshire county, and at the age of nineteen entered Williams College, from which he was graduated in due time. He then located at Newark, New Jersey, where he took up the study of law in the office of Judge Whitehead. He turned away from it for a period to take charge of a Latin and grammar class in Monmouth county. His preparation for the bar was resumed and completed in the law school at New Haven, Conn.

Judge Temple came to California in 1853, arriving at San Francisco, by way of Panama, on April 15. After a stay of about six months in the city, and a year passed on the farm of a brother, near Vallejo, he commenced the practice of law in Petaluma, early in 1855. Removing to Santa Rosa when that place became the county seat, he formed a partnership with Judge William Ross, which lasted about two years. Then, in 1857, he became associated with the most brilliant man who has ever belonged to the Sonoma bar, recognized as a wit and genius by all who met him—Charles P. Wilkins, now many years deceased. After the latter's death he united with Judge A. Thomas. The firm of Temple & Thomas was the leading one of that section, and did a flourishing business for seven years.

In 1867, when Henry H. Haight was urged to accept the Democratic nomination for Governor, he had a most valuable practice at the San Francisco bar, and was carrying weighty business responsibilities. He telegraphed to Jackson Temple at Santa Rosa, asking him to remove to San Francisco and take his business in hand. A favorable response induced

the San Francisco lawyer to accept the nomination for Governor, unanimously tendered him. He was elected and inaugurated Governor, and his law business went on as usual in Judge Temple's charge. In the middle of the Governor's term a vacancy occurred on the Supreme bench, and he had the pleasure of tendering the distinguished station to the gentleman whom he believed to be the safest counsellor of the California bar.

The vacancy was occasioned by the resignation of Hon. S. W. Sanderson, in January, 1870.

Judge Temple was on the Supreme bench at that time for two years. He left his seat, and Governor Haight's term ended, at the same moment. Quite in accord with the fitness of things, the two bar leaders resumed law practice in partnership. After three years Judge Temple returned to Santa Rosa. One year later, in March, 1876, he was appointed by Governor William Irwin, Democrat, Judge of the Twenty-second Judicial district, which district had just been formed from the counties of Sonoma, Mendocino and Marin. Serving two years, he was elected for a full term of six years, and held the office until the new constitution took effect. At the first election under that instrument he was chosen the Superior Judge of Sonoma county by a unanimous vote—the Republicans putting no candidate in the field.

On October 1, 1886, Hon. E. M. Ross resigned from the Supreme bench, and at the general election in the next month, Judge Temple was chosen to fill out the unexpired term of eight years. He resigned the place on June 25, 1889. He shortly afterwards accepted an appointment as one of the Supreme Court Commissioners, and served as such from 1890 to the beginning of 1895, when he again took a seat on our highest bench. He was elected for a full term of twelve years, which will expire in the first week of January, 1907. He will then be in his eightieth year. The editor of this History took occasion to observe of Judge Temple, as long ago as August, 1882, that "his place and destiny are on the bench. He is there now, and he will die in judicial harness. He has a secure hold on the popular heart. His opinions reveal a calm temper and a logical mind, and patient and severe thought. He is a man of wide culture, and disciplined in other sciences as in law."

The Judge has a large family. He married Miss Christie Hood of Sonoma county, in 1870. During his first term on our highest bench, in examining a large class for admission to the bar, Judge Temple stated a case and asked each of the candidates in turn how he would decide it. Each of them made answer, some with admirable promptness, when, with a twinkle in his eye, he informed them that the point in question was then pending before the Supreme Court.

THOMAS B. McFARLAND.

Thomas Bard McFarland was born in Mercerberg, Franklin county, Pennsylvania, and is a graduate of Marshall College, then located at Mercerberg. He studied law at Chambersberg, the county seat of Franklin county, with Robert M. Bard, a distinguished lawyer, who was a near relative and the father of our California Senator, Thomas R. Bard, and was admitted to the bar in November, 1849, by the celebrated Jeremiah S. Black, who was then judge of the judicial district which included Franklin county. Immediately afterwards he commenced preparations for crossing the plains to California, and arrived here in September, 1850. He followed the vocation of a working miner for over three years, and in the winter of 1853-4 began the practice of law in Nevada City, Nevada county, Cal. In 1861 he was elected judge of the Fourteenth Judicial District, then composed of Nevada county alone. In the same year he was married to Miss Susie Briggs, a native of New York, and sister of Mrs. Hunt, wife of Dr. R. M. Hunt, of Nevada City. There was only one child of the marriage, Miss Jennie H. McFarland. All of the family are living together in San Francisco. In 1863, under a constitutional amendment, Placer county was put into the Fourteenth District, and he was again elected judge of that district. At the end of his second term, in 1870, he removed to Sacramento City and practiced law there for about a dozen years, and during a part of that time was also register of the United States land office. He was also elected a member of the constitutional convention, which formulated the present constitution of the State, and served as such. As a member of the convention he voted against most of its

provisions, and afterwards opposed its adoption by the people. In 1882 he was appointed by Governor Perkins Judge of the Superior Court of Sacramento county; and in 1884 he was nominated by acclamation for the ensuing term and elected by a very large majority. In 1886 he was nominated by the State Republican Convention for Justice of the Supreme Court, and was elected. Having served a full term of twelve years he was, in 1898, nominated and elected for another term of twelve years, which he is now filling.

Judge McFarland followed, when a young man, the old Whig school of politics, but since the first election of Lincoln has been an unwavering and persistent Republican. With respect to the judicial decisions in which he has participated, and the opinions which he has written, it may be said that they embrace all the manifold subjects of litigation in California, and that he has probably taken part in as many decisions as any other California judge. He has done a great deal of hard work on the bench—he has devoted practically his whole life to it. His numerous opinions, contained in the California Reports, from volume 70 to volume 1226 thus far, have the concurrence of the bar generally. He has also delivered addresses and written literary papers which have been well received—as, for instance, his remarks from the bench on the death of ex-Supreme Judge A. C. Niles, published at the end of volume 82 of the Reports. His remarks before the Howard Club of San Francisco at the annual banquet of November 9, 1900, in response to the theme, "Reminiscences of College Days," elicited applause, and many parts were received with much laughter. They are in print for private circulation.

RALPH C. HARRISON.

Ralph C. Harrison, Justice of the Supreme Court, was a teacher of mathematics in Armenia Seminary, New York, in 1853, and a teacher of ancient languages and rhetoric in the same institution, 1854-56. He was a member of the Connecticut legislature in 1857. He studied law in the Albany Law School, 1858-59, and was admitted to the bar of the New York Supreme Court in 1859.

He practiced law in San Francisco from 1860 to January, 1891, when he became a Justice of the State Supreme Court, having been elected as a Republican for the term of twelve years. He first registered as a voter in San Francisco on June 2, 1866, as a native of Connecticut, then aged 34 years.

When he went to the Supreme bench in January, 1891, he had been in partnership with John R. Jarboe since 1867, for the last five years of which period W. S. Goodfellow was a member of the firm. Right after his arrival in San Francisco he formed a law partnership with General David D. Colton, which continued until he joined Mr. Jarboe. His term as Supreme Judge will expire in January, 1903.

At the bar Judge Harrison was noted for his close application to his business. He was hard-working and painstaking. He impressed all with his clearness of mind, his knowledge, accuracy and fairness. For legal acumen, lucid statement, and understanding of both the facts of a case and the principles governing it, he had few equals. He was of high character professionally and personally. A considerable fortune is the result of his practice. He has proven a very learned and industrious Judge. He has been twice married, losing his first wife many years ago. The present Mrs. Harrison is a niece of Hon. Whitelaw Reid, the eminent journalist and statesman of New York.

A. C. ADAMS.

Amos Crandall Adams of San Francisco, one of the survivors of the old district bench, was born in Pennsylvania, March 3rd, 1824. He is eighth in descent from John of Cambridge, 1650, (said to be VI John, son of Henry of Braintree). His parents were Jonas Russell and Olivia (Seeley) Adams. He removed with the rest of the family in 1836 to Downer's Grove, Ill.; returned to Pennsylvania, and entered Franklin Institute at Hartford and afterwards read law in Chicago, Ill., with Spring & Goodrich. He was admitted to the bar in 1848. He came to California in 1850 and engaged in mining, trading, etc., until 1854, when he resumed the practice of his profession at Mokelumne Hill, Calaveras county. In January, 1869, he was appointed by Governor H. H. Haight, District Judge of the then eleventh judicial district

court (embracing the counties of Eldorado, Amador and Calaveras) to fill the unexpired term of Hon. S. W. Brockway, resigned. In October following, he was elected to a full term of six years, and at the expiration thereof removed to San Francisco, and again resumed practice, still continuing the same in partnership with his son under the firm name of Adams & Adams. He married Miss Arvilla Aldrich in 1851, and, after her death, Mrs. Regina Kraft, January 21st, 1866. He is of Democratic politics.

JOHN R. AITKEN.

John R. Aitken was born in San Francisco, California, March 31, 1854, of Scotch parentage. He is a graduate of Hastings Law College; was admitted to the bar of the State Supreme Court, June 10, 1886, and began practice in San Francisco. In 1888 he removed to San Diego city, and was elected in the same year Superior Judge of San Diego county, to fill out the term of Hon. John D. Works, resigned. His period of service was from the opening of the year 1889 to the close of 1890, at the end of which he resumed practice in San Diego. In 1893 he returned to his native city, where he has ever since been enjoying a good general practice.

JOHN K. ALEXANDER.

John K. Alexander, the first Superior Judge of Monterey county, and who held the office from January, 1880, to January, 1891, was born October 8, 1839, in Rankin county, Mississippi, of American parents. His paternal ancestors were Scotch, and on his mother's side they were English and German.

His father was a contractor and builder, and did a large business. In November, 1849, leaving his family, a wife and two sons and a daughter, at Jackson, he started for California, arriving in the following January, and settled at Sacramento. From the time he left his family until July, 1854, his son, John K., attended both public and private schools at Jackson. In that year the family circle was complete again, at Sacramento, California. There John K. entered a public grammar school, which he attended until the fall of 1857. Then, his father being interested in a gold mine in Calaveras county, he was offered an opportunity to make his first money, and worked in the mine (the Woodhouse Quartz Company's claim) for about one year, laboring hard, to his great advantage physically. Returning to Sacramento, he attended the High School for three years, serving one term as vice-principal. Then graduating, he commenced the study of law in the office of George R. Moore, who was a good lawyer, with a large business. He studied later under Harrison & Estee, and was admitted to practice in the Supreme Court, October 7, 1862, upon motion of Hon. Morris M. Estee, now United States Judge of Hawaii, and after examination in open court.

In 1863 he formed a partnership with his old instructor, Mr. Moore, which lasted until the latter's death.

Mr. Alexander then continued the practice alone, doing a good and paying business un-

til the fall of 1868, when he formed a partnership with Hon. John W. Armstrong, who afterwards became Superior Judge. This firm was dissolved upon Mr. Alexander's taking the office of district attorney in 1870.

In the campaign of 1867, which resulted in the election of Henry H. Haight as Governor, Mr. Alexander was a conspicuous political figure at the capital, being chairman of the largest Democratic organization in that section. Two years later his party nominated him for district attorney, and he was elected in a Republican county over his Republican opponent, M. C. Tilden, by 684 majority. He served one term, two years, with more than average success, and was then nominated by his party for County Judge. But he had to run against that popular veteran, Hon. Robert C. Clark, who held a continuous estate in that office until it was abolished by the constitu-

tion of 1879, and also to stand up against the popular current on which Newton Booth was just then careering towards the chair of State.

He now went with his family to the eastern and southern states, to revisit the friends and scenes of his boyhood, and generally to see the country and its wonders. Returning, after three months' absence, he formed a partnership with A. C. Freeman, who has since produced many law books, and materially assisted in the preparation of his work on "The Law of Judgments."

In August, 1874, Mr. Alexander dissolved with Mr. Freeman, and on account of ill health, removed to Salinas City, the Monterey county seat, where he opened a law office. He had not been there long when the board of supervisors employed him in several important matters of public business. Among these was the case against Robert McKee, ex-county treasurer, on his bond, and one against M. A. Castro, ex-tax collector, also on his bond; and in a criminal action against the latter, and W. H. Rumsey, his deputy, which grew out of the burning of the courthouse. In these bond cases he recovered judgment and secured the money for the county. He was very successful in his new home, and, although often pressed to re-enter politics, refused, and attended strictly to his law business. But, in 1879, being nominated by his party for Superior Judge, he accepted the nomination, and was elected by 359 majority. He was re-elected in 1884, by a much larger majority in a straight fight between the Democrats and the Republicans, though the State and county went for James G. Blaine for President.

His candidacy in 1879 was induced by a request in writing, signed by 100 of the leading citizens of Monterey county, differing in politics, but all moved by a fear that the candidate of the Workingmen's party would be Superior Judge. He was afterwards nominated by the Democratic convention and the nomination was endorsed by the Republicans. He was elected over two opponents, for, besides the candidate of the Workingmen (N. G. Wyatt), the New Constitution party, another ephemeral organization, presented a nominee in the person of an old bar leader of that region, Hon. D. S. Gregory, since Superior Judge of San Luis Obispo county.

Judge Alexander has been in very full practice at Salinas since leaving the bench. He is cautious, careful and methodical, a man of dispatch. Very few of his judgments from the bench were reversed, although many appeals were taken from them. The first murder case tried before him, that of the People against Iama, is reported in 57 Cal., page 115. There the Supreme Court unanimously and highly complimented him. The official reporter, Mr. George H. Smith, sets forth Judge Alexander's charge to the jury in full. This is a fine legal paper, and adds to the value of the Reports. The Supreme Court in their opinion affirming the judgment of Judge Alexander, declared: "We are obliged to say, in justice to the learned Judge who presided at the trial, that the charge to the jury is a very clear and able statement of the law of homicide. It is a long charge, completely covering all the points in the case, and is, in our opinion, entirely correct."

Judge Alexander married at Petaluma, August 2, 1865, Miss Sallie B. Carothers, and has two sons, Elmer P. and Roy L., and a daughter, Maroueile Alice. He is a member of the San Francisco Bar Association, whose rooms he finds a most congenial place of retreat and conference in frequent visits to the metropolis. He has a younger brother, Daniel E., practicing law at San Francisco.

On July 7, 1888, he was honored with the degree of LL. D. by the Los Angeles University. Judge Alexander drew the very complicated will of Alberto Tresconey, which was contested, and, after a long trial, was admitted to probate at Salinas. No direct appeal was taken, but it was again attacked collaterally. Judge Alexander represented the beneficiaries, and the will was sustained in the Superior Court, and on appeal. (119 Cal. 571.) The estate was appraised at over $500,000.

It was principally through Judge Alexander's efforts that a fine Masonic temple was erected in Salinas by the fraternity, in 1896. He is President of the Masonic Hall Association, and has been such since its organization. He is a Past Master and Past High Priest of the order, and Past Patron of O. E. Star.

His father died in December, 1896, aged eighty-six years. His son, Elmer P., was appointed tax collector of Monterey county in July, 1897, to fill the unexpired term of the defaulting collector, Charles L. Westlake, and has held the position ever since, having been elected for a new and full term. Elmer is married, and has one son about three years old.

Judge Alexander received a very complimen-

tary vote for Supreme Judge in the State convention that nominated James H. Budd for Governor (1894). He is still in the active practice of the law at Salinas.

M. T. ALLEN.

Matthew Thompson Allen, one of the Judges of the Superior Court of Los Angeles county, was born near Greenville, Ohio, September 17, 1848—the son of Rev. John Allen, who was a native of Ireland. He attended the common schools of Ohio, and enjoyed a partial course in Otterbein University, at Westerville, in that State. He studied law at Winchester, Indiana, in the office of Hon. D. M. Bradbury, and for a short time was assistant prosecuting attorney for the nineteenth circuit of that State.

Returning to Greenville, Ohio, in 1871, he entered upon the practice of law, which he continued until the fall of 1886. In that year, on account of ill health, he came to California and settled at Los Angeles, resuming the practice there in the following year. He was elected a Judge of the Superior Court in the fall of 1896, and began his term on the bench, January 1, 1897. Prior to this he was United States attorney for the southern district of California during the administration of President Harrison, resigning such position upon the incoming of President Cleveland's second term.

During Judge Allen's incumbency upon the bench, he has been the author of two decisions which have attracted more than usual attention, viz., that which declared that marriages at sea, commonly termed "tug-boat marriages," are void; the other decision enforced the right of an indigent husband to maintenance out of the separate estate of the wife, where he had been driven from home by cruelty. Both of these decisions were affirmed by the Supreme Court.

FRANK M. ANGELLOTTI.

The Judge of the Superior Court of Marin county is a native son of that county, born in the year 1861. He was educated in the schools of this State, and is a graduate of the Hastings College of the Law.

He commenced the practice of the law in San Rafael in the year 1883. In 1884 he was elected district attorney of Marin county, and was twice re-elected to that position. In 1890 he was elected Judge of the Superior Court, and in 1896 he was re-elected without opposition, having received the nomination at the hands of the Republican party, and the endorsement of the Democratic party.

JOHN W. ARMSTRONG.

John W. Armstrong came from the State of Ohio to California in 1852. He studied law under the late Judge Fabens, at San Francisco, and after having been admitted as an attorney, located in Jackson, Amador county, where he mined for a year or more, during which time he practiced law when the opportunity presented itself. In the first case that he tried he needed a law book that could not be obtained in Jackson, so he walked to Mokelumne Hill (five miles distant), and not having the money to pay his toll on the bridge over the Mokelumne river, he waded the turbulent stream, procured the book, and prevailed in his case. He was a man of iron will, and no obstacle with which he was confronted ever deterred him from his purpose, if it was possible of execution. His indefatigable industry and unparalleled perseverance, with his readiness to comprehend and grasp intricate problems of law, soon attracted the attention of the public, and he readily acquired a lucrative practice. For more than twelve years, he was the law partner of the late United States Senator James T. Farley. As early as 1858, it was said of him by a distinguished Judge of Amador county, that he furnished the brains for the bar of that county, and more recently, in a discussion of the relative merits of the members of the bar of the State, it was said by the Chief Justice of our Supreme Court that no other attorney presented his case in a more clear, succinct and forcible manner than Judge Armstrong did. This opinion was concurred in by the Associate Justices.

He moved to Sacramento in 1868, where he soon established an extensive practice, and for thirteen years he and Judge A. C. Hinkson were associated in the practice of the law.

During the early part of the administration of Governor Stoneman he appointed Judge Armstrong to a vacancy on the Superior Court bench of Sacramento county, and just before the expiration of Governor Stoneman's term, another vacancy occurred on the bench of Sacramento county, and Judge Armstrong had developed such peculiar fitness for the position that it was by common consent that Governor Stoneman again appointed him Judge of that county. Subsequently he was nominated for Judge of the Superior Court of Sacramento by the Democratic party, of which party he was

always a faithful adherent, and though the Republican ticket carried the county by a large majority, he was elected by a majority of over two thousand. After the expiration of his term he resumed the practice of the law, which he pursued up to his death, which occurred on the 21st day of March, 1896, when he had attained the age of sixty-one years.

Judge Armstrong possessed many commendable social characteristics. While he was a man of wonderful force of character, and was fearless and aggressive, he was broad-minded, just, tender-hearted, sympathetic and generous, and though he enjoyed a lucrative practice, his purse was always open to his friends and the needy. By reason of his liberality and charity, he accumulated but little wealth, but left to his family a far more valuable heritage, an unsullied reputation; and as lawyer and citizen, his life and example are well worthy of emulation by his surviving brothers in the law.

N. D. ARNOT.

Nathaniel Dubois Arnot, Judge of the Superior Court of Alpine county, was born in the village of Gouverneur, in the county of St. Lawrence, State of New York, in April, 1845. He is the only son of N. D. and Amanda Arnot, who came to California in the early days. Judge Arnot's father was a man of great energy and enterprise. He was superintendent of the Fremont estate in Mariposa county, where he became intimately acquainted with General Fremont, Frederick Billings and Trenor W. Park; he was later manager of the quicksilver mines at New Almaden, and an owner of the Vulcan Iron Works, in San Francisco.

After attending the Brayton school in Oakland, where he formed many close and lasting friendships, especially that of Charles Warren Stoddard, poet and traveler, Judge Arnot was graduated from the College of California, as the University of California was then called, in the class of 1869. His class was a small one, the Hon. John B. Reddick, late Lieutenant-Governor of California, being of the number. Deciding upon the profession of the law, Judge Arnot entered the law school at Albany, New York, and was graduated from that institution with high honors. Owing to the genial and ingenuous disposition which has always made him hosts of friends wherever he has gone, he was made president of his class. His course at this noted law school was one of great inspiration, especially by reason of the close personal contact which the students were privileged to have with the distinguished members of the Albany bench and bar of that day—Rufus W. Peckham, Sr., Lyman Tremain, his law partner, and Ira Harris, United States senator from New York, and Judge Amasa J. Parker.

In 1871 he married Miss Mary Eugenia Hol-

brook, of Gouverneur, his native place. Mrs. Arnot was a woman of rare qualities of mind, a Vassar graduate, and a lady whose unselfish and radiant disposition won all hearts. Mr. and Mrs. Arnot took up their residence in San Francisco, where they lived until Mrs. Arnot's death in 1875. Mr. Arnot then removed to Silver Mountain in Alpine county, where his father was building a large quartz mill for an English mining syndicate. Ever since that time, he has been a resident of Alpine county. After practicing law for a short time, in Silver Mountain, he was offered the nomination of Judge of the new Superior Court, which, under the new constitution, succeeded the old District Courts. He was elected by a large majority, and has held the office continuously since January 1st, 1880. He is one of the six judges now in office who have served continuously since the new constitution went into effect. His compeers in this respect are Judges Corcoran of Mariposa, Gottschalk of Calaveras, Greene of Alameda, Hunt of San Francisco, and Jones of Trinity.

Judge Arnot married for his second wife Miss Anna M. Ford, of Silver Mountain—a woman of intellect and much force of character. Eight children are the issue of this marriage, the eldest of whom, Miss M. Eugenia Arnot, was graduated from the University of

Nevada at Reno in 1900. Judge Arnot has by his first wife, one son, Raymond H. Arnot, who, after graduating at the Phillips Exeter Academy, Yale College, and Yale Law School, took up the practice of the law in Rochester, in the State of New York, where he still resides.

By his winning and gracious manners, general good fellowship, and democratic ways, Judge Arnot has endeared himself to every community in which he has held court. Being a judge in a small county, he is frequently asked to preside in the Superior Court in other counties of the State; notably so in Amador, Calaveras, El Dorado, Inyo, Modoc, Mono and Sacramento. Though often urged to accept the nomination for Superior Judge in several of the counties in which he has held court, he has refrained from opposing those whom he regards as having a prior claim to the high office, and he remains loyal to little Alpine, where many happy years of his life have been spent. As a man, he is universally respected, and as a judge he is learned, fearless and impartial.

J. S. BEARD.

Judge J. S. Beard, of Yreka, Siskiyou county, California, was born in the old Keystone State sixty-three years ago. In the spring of

1853 he assisted in the survey of that portion of the Reading Railroad extending from Shamokin to Sunbury. Late in 1854 he entered the prothonotary's office of Northumberland county, under his father. There he studied law, and was admitted to the bar on April 7th, 1857. He practiced his profession for a time in his native state, and removed to Oregon in 1859, and shortly thereafter to California. He settled in Siskiyou county in 1862 and in 1864 he resumed the practice of the law in connection with L. N. Ketchum. During the Civil War then in progress, many lawyers were driven into other pursuits of life. He then engaged in teaching school, which occupation he followed about eight years, when he again resumed the practice of law. He was president of the first Board of Education of Siskiyou county, and has taken a lively interest always in educational matters. He was elected district attorney in 1882, and was holding that office in 1890, when he was elected Judge of the Superior Court. He was re-elected to the judgeship in 1896.

Judge Beard is a man of family, having been married twice. His first wife's name was Annie W. Ackley, by whom he had four children, Annie Ackley, now intermarried with S. H. Hill; John A., James G., and Charles Webster, the last named deceased. His present wife's maiden name was Emma J. Bigelow. They have two children, Emily Grace and Susan Margarette.

The Judge joined the Independent Order of Odd Fellows on November 6th, 1857, and is a Past Grand. He is a Past Chancellor of the Knights of Pythias; Past Master of the Ancient Order of United Workmen; and for two terms held the position of Eminent Commander of Mount Shasta Commandery No. 32, Knights Templar.

He is a member and an active worker in the Methodist Episcopal church, and an earnest friend of every movement that is calculated to promote the welfare and hapoiness of humanity.

EDWARD A. BELCHER.

Edward A. Belcher, a judge of the Superior Court of San Francisco from October 25, 1893, to the close of the year 1900, was born in Vermont, on August 1, 1855. Isaac S. Belcher, who had a long and distinguished career at the bar and on the bench in California, and who is written of in this History, and also William C. Belcher, elsewhere referred to, were his half-brothers.

Edward A. Belcher was educated at Putnam College, Newburyport, Mass., but left for California, in 1868, before graduating, and located at Marysville, where his brothers were established in law practice. In their office he prepared himself for the bar. He was admitted to practice by the Supreme Court on October

10, 1876. In the following year he was city attorney of Marysville. He was lieutenant-colonel on the staff of Governor Perkins, 1880-82. Having pursued the practice of law in Marysville until 1890, he removed to San Francisco in July of that year. He became a Judge of the Superior Court, by appointment of Governor Markham, on October 25, 1893, to fill a vacancy, and in November, 1894, he was elected a judge of that court for a full term. This ended, as stated, with the close of the year 1900.

Judge Belcher is a member of the Masonic order. He is of Republican politics. On the bench his course was always eminently impartial, and marked by that unflagging industry and conscientious discharge of every duty, which were dominant qualities of his older brothers.

AARON BELL.

Aaron Bell a native of Center county, Pennsylvania, was born December 2nd, 1832. His ancestors came to America from Scotland before the Revolution. His grandfather, John Bell, served on the side of the colonies under Benedict Arnold, whom he accompanied on his expedition to Quebec. After the war he settled in Ohio where Cincinnati now stands. He afterwards moved to Pennsylvania where he engaged in farming, and later, in mercantile pursuits. John Bell was a zealous Presbyterian. He married in New Jersey and had four sons and two daughters.

John Bell, Jr., the father of the Judge, was born in Mercer county, Pennsylvania, in 1813, and was for many years engaged in the manufacture of iron at Pittsburg, Johnstown and other places in that State. He married Miss Christiana Evans of Huntingdon county, Pennsylvania. The Judge's mother made her home with him for many years and died in 1899, aged eighty-seven years.

Aaron Bell was the eldest child. He was educated in Pittsburg where he also studied law. He came to California in 1852 and settled in El Dorado county, where he engaged in mining. During his sixteen years' sojourn in that county he was elected justice of the peace, and appointed deputy county recorder, deputy county clerk, and city clerk of Placerville. Meanwhile he continued his law studies, and was admitted to the bar in the old District Court in 1864. He practiced for three years in Sacramento, giving the United States land law his special attention.

A United States land office had been established at Shasta, and Mr. Bell was sent there to unravel some complications between that office and the department at Washington. Upon this occasion he became favorably impressed with the county and located at Shasta, where he was appointed registrar of the land office and served in this capacity for six years, until 1879, when he resigned, having received the nomination on the Republican ticket for Judge

of the Superior Court. He was elected by a majority of 600 votes, running 500 votes ahead of his ticket.

During the Judge's first term the sheriff-elect of the county was refused the office by the incumbent upon the ground that the former had not given sufficient bonds. The pretension was that by the census of 1880 the county had advanced from third to second class and that the bond given by the sheriff-elect did not conform to legal requirements. The case was carried into court and Judge Bell decided in favor of the newly-elected officer, making an order to seize the books and papers, and to take sufficient force to execute the same. The out-going officer and his men, armed with Henry rifles, held the courthouse, with the door barred on the inside. Refusing admission, they threatened that whosoever touched the door would do it at the peril of his life. Nevertheless, the doors were broken, the books and papers seized, and the new officer was installed. The people took sides, and feeling ran high. The case was carried to the Supreme Court, which sustained Judge Bell in every particular.

Another incident of note was the case to prevent the removal of the county seat from Shasta to Redding. When Judge Bell gave his decision the courthouse was filled with people, and excitement ran high in both towns. The case was appealed and after three years, the Supreme Court decided in accord with Judge Bell's decision in favor of the removal.

Judge Bell held the office of Superior Judge for eleven years. The last time he was elected the party's majority was eighty, but he carried the election by 800 majority.

During later years he has again interested himself in mining. In 1853 he had been a partner of Marshall, the discoverer of gold in El Dorado county, and latterly with his brother, Jos. E. Bell. He has also been interested in a box, shingle and lath factory, and in 1889 he manufactured over 400,000 raisin boxes.

The Judge takes much concern in fraternal organizations. He became an Odd Fellow in 1855; has been a member of the grand lodge since 1861; and is a member of the Veteran Association of the State. He is a charter member of Shasta Lodge, A. O. U. W., which started in 1878; and has been grand commander of the American Legion of Honor of California for two terms.

In 1874 January 1st, the Judge married Miss Julia Fipps, a school teacher at Shasta, who is still the happy companion of his home. They have one son, married, and another attending school.

From the American Legion of Honor Record dated March, 1884, the following lines are quoted: "Judge Bell is a gentleman of pleasant address and disposition, and he is quite popular in Shasta county. His course when he became Judge, with the impartiality and fairness which marked his decisions on the bench, his untiring attention to the duties of his high office, his courtesy and kindness to his brother attorneys, have won for him the respect and admiration of the community. He is a strictly temperate man, a diligent student, possessing an unruffled temper, courteous in his demeanor, the friend of the poor and needy, always ready to do good to his fellow man."

At this writing Judge Bell, at the age of 67, is in vigorous health, and active in his law practice. He has won the success he merited, and is congenial in his social relations and happy in his home circle.

EUGENE A. BRIDGFORD.

Eugene A. Bridgford, now of San Francisco, but who was for a long period Superior Judge of Colusa county, was born in Monroe county, Missouri, on the 26th day of January, 1849. He was educated in the common schools of that county, and later at Vanrensseleer Academy.

He came to California in 1870, and began the practice of law in 1877 in Colusa county. He was active in the practice until January, 1882, when he was elected to the Superior bench. This position he occupied for fourteen years, and made a record which may be said to be exceptional in some respects.

During his incumbency he tried twenty-five murder cases, resulting in twenty-one verdicts of guilty.

Some of these cases attracted widespread attention. Among those more noted were the cases of Miller, for the killing of Dr. Hugh J. Glenn, who at that time was the largest wheat producer in the world, and who was the Democratic candidate for Governor in 1879; Hong Dye, for the killing of Mrs. Billou; and Fremont Smith, for the killing of two fishermen.

Hong Dye attempted to kill the whole Billou family. He was brought to trial before Judge Bridgford. The case attracted much attention throughout the State, and particularly in that section. People from many miles distant and from adjacent counties attended the trial. A verdict of the jury was reached about eleven o'clock at night. This information was conveyed to the Judge. He had been a close observer of the situation, and realized that if the verdict was anything less than murder, with the death penalty, and the prisoner should be brought into court at that time of night, mob violence would at once ensue, and the prisoner be taken from the courtroom and hanged. He felt warranted, under the circumstances in pursuing a somewhat unusual course. So he directed the bailiff in charge of the jury to call some one of the jury to the door of the jury room and ask him what the verdict was, take his reply, and report. The bailiff did as directed, and received the information that the verdict was murder in the first degree—penalty, imprisonment for life.

The bailiff was directed to say to the jury that the Judge had gone home for the night and would receive the verdict the following morning. An hour later it became known that

the jury had reached a verdict. Accordingly, a number of gentlemen, including Andrew Lawrence, who represented the San Francisco *Examiner*, visited the Judge's home, calling him up, and announced that the jury had reached a verdict and desired his presence. The Judge quietly informed them that he had retired for the night, and would receive the verdict during court hours the next day.

The Judge appreciated the gravity of the situation. While there had been no outward demonstration, he could see vengeance in the atmosphere. He determined, if possible, to thwart the purpose of the gathered populace. No one yet knew what the verdict was except the bailiff and the Judge.

Before sunrise the next morning the Judge visited the clerk of the court and arranged to immediately repair to the court room and receive the verdict before the people could know of it. It being necessary to have the attorney for the defendant present, a note was written, explaining the plan of action, and given to a messenger with directions to go to the home of the attorney of the defendant and deliver it to him personally. This was done, but the attorney having been up most of the night before, fell asleep again, and did not put in an appearance until eight o'clock. In the meantime it became known around town that the Judge was at the court house. When the attorney for the defendant appeared, the court room was full of strong, determined men. The Judge saw what he had to confront, and prepared to meet it as he best could. He held a brief interview with the sheriff and admonished him to promptly arrest the first man making any demonstration. The jury was brought in and asked if a verdict had been reached. The foreman answered in the affirmative. There was a deathly stillness in the court room, while all eyes were fixed upon the jury and the prisoner. The foreman announced the verdict of murder with life imprisonment. The whole court room rose as one man, and a dozen pistols were drawn. The leader said: "We are not satisfied with the verdict, and will take the prisoner." The Judge was immediately on his feet, and said to the sheriff: "Arrest that man." The sheriff hesitated, and the Judge, rapping on his desk with a ruler, said: "Mr. Clerk, take down the name of every man who comes within the bar, and I will see that he is prosecuted to the full extent of the law." Andrew Lawrence, the *Examiner* man, shouted: "Call their names, Judge, and I will take them down." This had the effect of staggering the mob. The Judge, however, realized that they must not be given time to recover, and said sternly: "Mr. Clerk, enter a fine of $500 against every man who is in this court room in two minutes from this time." This had the desired effect. There was a rush for the door. The men who were willing to face guns were dispersed by threats of a fine. The court room was immediately cleared. An examination a few minutes later showed that the mob had prepared a rope with a noose, and made it fast to a bridge connecting the upper stories of the court house and jail building. The hanging of the Chinaman would have been the work of a minute had the mob succeeded in taking him. The Chinaman was subsequently taken by the mob from the jail and hanged. It was a common saying in that part of the State for a long time that Judge Bridgford routed a mob with a ruler.

Judge Bridgford, during his term of office, tried hundreds of criminal and civil cases, and did not have a ruling in a criminal case reversed. One case was reversed because the Supreme Court held the evidence was insufficient to warrant the jury in finding the defendant guilty. His record in civil cases was almost as good. He tried many new and important questions, and met with as few, if not fewer, reversals than any other Judge in the State.

In 1894 he was nominated by acclamation by the State Democratic convention for Associate Justice of the Supreme Court. It proved not to be a Democratic year, and he was defeated.

He was a member of the legislature of California in 1897, and was recognized as one of the leaders of the assembly.

The irrigation laws of the State had resulted in much dissatisfaction and protracted litigation. Judge Bridgford was a member of the committee on irrigation, and at a joint session of the irrigation committees of the senate and assembly he was appointed to remodel, bring together and harmonize the various acts upon the subject. This he did by drafting and presenting a bill covering the whole subject. This became and is now the law.

In 1897 Judge Bridgford moved to San Francisco, where he is engaged in the practice of his profession.

ANSON BRUNSON.

This well-remembered light of the profession of law was born in Portage county, Ohio,

William F. Fitzgerald

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April 16, 1834. He was graduated from the University of Michigan in 1857, paying his expenses by working at odd jobs. He was admitted to the bar in June, 1858. In 1864 he came to California, and lived at Napa and San Francisco for short periods. He settled permanently at Los Angeles in December, 1868. For many years he was in partnership with J. G. Eastman, under the firm name of Brunson & Eastman, which, after January, 1875, was Brunson, Eastman & Graves. In the fall of 1884 he was elected a Judge of the Superior Court, and served from January, 1885, to April 1, 1887, when he resigned. He died at San Bernardino on the 8th of October, 1895.

Judge Brunson's first partner, Mr. Eastman, died many years before him. Mr. J. A. Graves, his only other associate in practice, and who cherishes his memory, has kindly written of him for our History, as follows:

"I knew him intimately. I arrived in Los Angeles on the 5th day of June, 1875, and went into the office of Brunson & Eastman as a clerk and law student, and was admitted to partnership by them on my admission to the bar in the following January.

"Anson Brunson was one of the very able men of this Coast. He was remarkably quick at seizing an advantage during the trial of a case. He was courteous in his demeanor to opposing counsel, the judge, and witnesses, and had an extremely pleasing address. His voice was distinct, low, well-modulated, penetrating, and under perfect control. He was extremely ready-witted. I remember during the trial of a case wherein a prominent bank of Los Angeles sought to recover of one of its officers and directors an amount of money which he had received as a commission on a loan made by the bank, about the time of the failure of the Bank of California, when all the banking institutions of this State were put to a very severe strain. The loan was a large one, and should not have been made. This bank, like many others, got into difficulties at this time. Its president was in Europe. He hurried to its assistance, put it on its feet, and it has ever since been the leading bank of Southern California. The president of the corporation was testifying to the low condition of the finances of the bank at the time the loan complained of was made, and his testimony startled every one. No one could have believed that the bank was in the condition which his facts and figures showed it to have been in at the time. Judge Brunson, in that inimitable style, born in him, full of serio-comic pathos, addressed the court immediately after the testimony was given, as follows:

"Your Honor, will you please adjourn court for a few minutes? I must go and get my note out of that bank. I cannot have my financial integrity imperiled by leaving it there longer."

By those knowing Brunson, and knowing his utter disregard for financial matters, and that he was always hard-pressed for money, the humor of the remark can be fully appreciated.

On another occasion, while he was counsel for the Southern California Railway, he was defending an action for damages. The attorney for the plaintiff, whom we will call Mr. Blank, in examining the jury, hung to them with bull-dog pertinacity, and got frequent and repeated reiterations from them, that none of them had ever been clients of Judge Brunson. When the jury was passed by the plaintiff for cause, Brunson looked up and addressed the jury about as follows:

"Gentlemen, from the intelligent appearance of this jury, I deem it unnecessary to ask any of you whether you have ever been clients of Mr. Blank. I pass the jury for cause."

Judge Brunson was a good pleader, better than the average; but after he had prepared his complaint or answer, the detail work of preparing for trial was exceedingly distasteful to him. In this regard he was one of the most reckless men I ever met. He would tell a client what he wanted to prove, and would never examine the witnesses beforehand, and the result was that he often got himself and his client into most desperate situations; but he was the greatest sprinter I ever saw in getting out of a pit which he had thus dug for himself. Between the years 1870 and 1875 an examination of the California cases will show more questions of practice settled in appeals in which he was interested than in appeals taken by any other ten men of the State; and in every one of these cases he was rescuing himself from some desperate situation.

We who knew him best loved him most. We drew the mantle of charity over his faults, and the memory of his genial manner and his gifted intellect, his lovable companionship, and his kindly word for every one, will forever linger with us."

GEORGE H. BUCK.

George H. Buck is a native of Maine, where he was born in 1847. He had the good for-

tune to start in life with a broad and liberal education. During the earlier years of his manhood he had charge of Gorham's Seminary and Academy in Maine. His mind later took a legal turn, and, believing that the bar afforded him a large field for a successful career, he entered the office of Woodbury & Ingalls, of Boston, Massachusetts, as a student of law. He was admitted to the bar in that state in 1871. For some years he held the position as associate attorney for the Indianapolis, Cincinnati and Lafayette Railroad, which position he resigned in 1874. Turning his steps westward, he came to California and located in the thriving city of Redwood. In 1882 he was elected district attorney of San Mateo county, which position he held through successive re-elections, until 1890, when he was nominated and elected Superior Judge of San Mateo county. He was re-elected to the same position in 1896, upon the Democratic ticket in a strongly Republican county. Nothing could illustrate better Judge Buck's popularity and the high esteem in which he is held by his fellow citizens.

The Judge is an influential leader of the Red Men's order, as well as of the Druids, I. O. O. F., and other fraternal societies. He is well known in San Mateo county, having practiced law there some years before his elevation to the bench. He is a man of sincerity and of rare probity of character, and is strongly intrenched in the regard of the people.

A. J. BUCKLES.

Abraham Jay Buckles was born in Muncie, Indiana, August 2, 1846. He was sent from home to live on a farm at the age of six years. In the winter season he attended school.

When the war broke out in 1861, he enlisted in a company raised at Muncie, under the call of the President for volunteers for three months' service. He was not yet 15 years old, and his grandfather would not permit him to go. When the call for troops to serve three years was made, he enlisted again, June 21, 1861, and, informing his people that he was determined in the matter, they made no further opposition. He went to Washington in Company E, 19th Indiana Infantry, which afterwards became a part of the famous fighting "Iron Brigade" of the Army of the Potomac.

The boy-warrior was destined to severe ordeals. In the second battle of Bull Run, in August, 1862, he was wounded in the thigh. At Gettysburg, July 1st, 1863, he was wounded in the shoulder. In this battle he rescued the colors of his regiment, and so became color-bearer. In the battle of the Wilderness, in May, 1864, while color-bearer, and leading a charge he was shot through the body. The United States congress gave him a medal for his gallantry on this sanguinary field. At Hatchin Run, March 25, 1865, fifteen days before Lee's surrender, while in charge of a skirmish line, he was shot through the right knee, which necessitated the amputation of the right leg near the body.

The war over, the young hero, then only 19, went to school, and, after nine months of study, became a school teacher. At other times he clerked in stores, and did whatever offered for a livelihood, the while keeping his mind on the law and reading its pages as opportunities came.

He was also young when he married, the lady being Miss Louisa B. Conn, Dec. 5, 1865. There are two children of the marriage, Lola D., and Jessie. Coming to California with his family in 1875, he located at Solano county, and began the practice of law in that year, at the age of 29.

In 1879 he was elected District Attorney of Solano County, and was re-elected in 1881. In 1884 he was elected Superior Judge of Solano, and by successive expressions of the popular will he has ever since held that position. The people of Solano county declare that he can be their Superior Judge as long as it shall be his wish. And, too, they "love

Joseph H. Budd

him for the dangers he has passed, and his bravery shown."

Judge Buckles is a member of the A. O. U. W., I. O. O. F., K. of P., U. A. O. D., Elks, and M. O. L. L. U. S. He has been department Commander, Department of California and Nevada, G. A. R.; Grand Chancellor, Knights of Pythias, Domain of California, and is now a Supreme Representative of the last-named order.

JOSEPH H. BUDD.

Judge Joseph H. Budd was born in Dutchess county, New York, January 22, 1822. His father was a farmer. He is of German descent on the side of his mother. He is a graduate of Williams College, Massachusetts, and studied law in Poughkeepsie, New York. He practiced his profession as a lawyer first in Janesville, Wisconsin. Removing from that state to California in 1857, he settled in Stockton in 1860. While engaged in the practice there he was elected a Judge of the Superior Court of San Joaquin county in 1888, for an unexpired term. He has been twice re-elected to the same office for full terms. The Judge is the father of Hon. James H. Budd, who has been a member of congress from California, and the Governor of the State. His other son is one of the regents of the California State University. He has no other children.

ALBERT G. BURNETT.

Judge Albert G. Burnett was born in Polk county, Oregon, April 9, 1856. In 1858 he

came with his parents to California, where he has since resided, with the exception of two years spent in his native state. He has been a resident of Sonoma county since 1873. His father was a clergyman of the Christian church. One of his uncles was Peter H. Burnett, the first Governor of California, and afterwards a Justice of the Supreme Court of the State.

Judge Burnett was a teacher in the public schools of Sonoma county for nearly ten years. Among the positions held by him was that of principal of the Healdsburg public school for four years, and of the Petaluma grammar school and the Petaluma high school for three years and a half.

He was admitted to the bar by the Supreme Court in January, 1887, and located in Santa Rosa in May of the same year for the practice of law. He was elected district attorney of the county in 1888, and was re-elected in 1890 by an increased majority. He and Judge Dougherty were chosen Judges of the Superior Court at the election held in November, 1896. Their opponents were H. B. Ware, Esq., and Hon. J. C. Sims.

EDWIN R. BUSH.

Judge Bush was born October 17, 1846, in Copiah county, Mississippi. He removed to the Northern states in April, 1855. His father, a physician, came to California in August or September, 1849, practiced medicine first at Stockton, and in 1854 or 1855 went to San Francisco, where he continued the practice of his profession for many years.

Mr. Bush remained at the East until August, 1869, acquiring an education and preparing for the practice of the law, studying in the offices of several prominent practitioners in New York and Michigan. He attended the session of 1865-66 of the law school of the University of Michigan, and the sessions of 1867-68 and 1868-69 of the University of Virginia, graduating from the latter institution July 3, 1869, with the degree of B. L. He arrived in California in the latter part of August 1869, and was admitted to practice by the Supreme Court of California in December of that year. He removed to Yolo county in May, 1870, for the practice of law, and has resided there ever since.

In 1871 he was elected public administrator, and held the office for three years. In 1875 he was elected County Judge for four years, and served the term; and in 1879 was elected Superior Judge for the first term under the new constitution, and held the office for five

years. In 1898 he was elected to his present office of district attorney, for four years.

JAMES V. COFFEY.

James Vincent Coffey, Superior Judge since 1883, was born in New York City, on the 14th day of December, 1846. He was employed in that city in a law office for five years prior to coming to California. He is of Irish parentage. His early education was acquired at Bridgeport, Conn., where he was a close student in many departments of learning. His father was by occupation a farmer and merchant. The Judge came to California in 1863. He prosecuted his studies at Nevada City, one of his preceptors being W. E. F. Deal, since distinguished in law and politics in Nevada state, and now at the bar of San Francisco. Under Mr. Deal he became a good Latin and general scholar. He subsequently passed some years in Virginia City, Nevada, where he was clerk in the leading law firm of Corson & White. (Captain Martin White now lives in San Francisco, retired. Dighton Corson became Chief Justice of the Supreme Court of South Dakota.) In San Francisco he was employed in the office of Casserly & Barnes (Hon. Eugene Casserly and General W. H. L. Barnes) for some two years, 1867-69. During all this time he had been reading law diligently, and was admitted to the bar of the California Supreme Court in 1869, receiving some very complimentary expressions from the examining judges. In the early period of his professional career he was for some six years an editorial writer on the San Francisco *Daily Examiner*. In 1879 he was chairman of the Democratic county convention of San Francisco. In that year the Democratic State convention unanimously nominated him for attorney-general, but he declined. In 1882 he was elected Judge for an unexpired term, and for the succeeding full term of six years, on the bench of the Superior Court. He was re-elected for a full term in 1888, and again in 1894. He was presiding Judge of the court in 1887. He was elected again for a full term in November, 1900.

After nearly a year's service in a general civil department, he was assigned to the probate department of the court.

There were twelve Judges of the court then, as now, but only one of the departments was devoted to probate business. Since the year of 1889 part of the probate business has been diverted to another department. Judge Coffey's service in probate has far exceeded that of any other Probate Judge the State has ever had, but there are six Superior Judges in the State whose periods on the bench have been a little longer than Judge Coffey's, and who exercise probate powers with their general jurisdiction. Judge Coffey's department is probate strictly. His decisions, down to 1888, were published by T. J. Lyons and Edmund Tauszky. Two more volumes are in preparation.

Judge Coffey was twice elected a member of the assembly from San Francisco, serving at the legislative sessions of 1875-76 and 1877-78. He was made chairman of the San Francisco delegation at both sessions. He was also an industrious member of the judiciary committee.

Judge Coffey, in addition to his legal knowledge, has a large fund of general learning. He has excellent literary tastes, and is a great lover of books. He has been since 1893 President of the California Historical Society.

In 1890 he was one of the candidates for Justice of the State Supreme Court, but was defeated with his party. The Judge is a man of excellent habits, capable of long continued exertion, very methodical and painstaking. He has the habit of taking full notes in long-hand of the testimony of witnesses before him.

His integrity is a proverb. The man, on or off the bench, cannot be pointed out, who loves truth more or follows duty closer. The public sentiment insists that he shall remain in his present position as long as he desires, unless he leaves it to take a seat on the Supreme bench. His elevation to that bench is generally looked for, and is altogether probable. Only in a court of last resort can a judicial mind of such sharp sight and wide survey, searching the springs of human action and reading the enigmas of human temperament, find its proper forum.

The Judge is a bachelor. He has lost two brothers in California. His nephews, Jeremiah V. Coffey and Edward I. Coffey, are men of character and standing, widely known in the State.

Judge Coffey has a rich vein of humor, and has said more witty things from the bench than any other Judge in our State history. In the command of language he is exceptionally gifted, being remarkable for nicety and exactness of expression.

James V. Coffey

We had occasion to say of Judge Coffey, after he had been on the bench a few years, that "having impressed his mind on the legislation of the State, while the head of the San Francisco delegation in the assembly, he has since so crowned the bench with honor as to show this is his peculiar station. And he possesses so deep an insight into human character that he seems to learn by heart every one with whom he is called to deal."

A statement of the great Blythe case will be found in the sketch of General W. H. H. Hart. A jury being waived, the trial occupied Judge Coffey for one year, after which he gave four weeks to a close study of the large mass of evidence. On July 31, 1890, he rendered his decision, which comprised about 125,000 words. The editor of this History had the pleasure of being present on the interesting occasion. General W. H. L. Barnes, William F. Herrin, and many other prominent lawyers were close observers, in addition to the great array of counsel in the case. General Barnes, who came early, remarked that although he was not an attorney in the case, he regarded the decision about to be pronounced as the event of a lifetime. Some ladies were in attendance, including those most interested, the one claiming to be the widow, and Florence, the heiress. Florence was then in her seventeenth summer.

Judge Coffey, on taking the bench, referred to his custom of simply placing his decisions on file in the clerk's office, where the attorneys, and others interested, might examine them at convenience. He had determined in this Blythe case to read his opinion, but would abbreviate by omitting the formal parts and the numerous exhibits. He had prepared two full opinions in the eight cases into which this controversy was divided, and also had written briefer opinions on the collateral cases.

Judge Coffey was voted for in the California legislature of 1899, as Democratic candidate for United States senator. He was tendered the Democratic nomination for congress in the Fourth district on the Democratic ticket in September, 1900, but declined.

We had some correspondence with a very excellent and scholarly man, a Judge of the San Francisco Superior Court, on the subject of Judge Coffey in connection with our "Bench and Bar" sketches of a decade ago. "I would deprecate," that jurist wrote to us then, "any too great stress upon the struggles of Judge Coffey's life, which he has borne more manfully than most men—than myself, I know—and yet it is the temper which he has brought unsoured out of his battles that is his chief proof of manliness."

CARROLL COOK.

Carroll Cook, one of the twelve Superior Judges of San Francisco, was born in that city in January, 1855. A sketch of his father, Elisha Cook, who maintained a high fame at that bar for a goodly period, will be found in this History. Carroll Cook was educated in the public schools of San Francisco, and at Union University. He was admitted to the bar of the California Supreme Court in 1874, and practiced, principally in criminal cases, for about twenty years. In 1876-77 he was in partnership for about one year with John Luttrell Murphy, who was afterwards city attorney, and in 1890-91 with John E. Foulds. He was first assistant United States attorney under Hon. S. G. Hilborn, 1883-86.

Judge Cook was elected, as a Republican, a Judge of the Superior Court in November, 1896, for a full term of six years, which will end in January, 1903.

The Judge was married in 1876, and is now a widower, Mrs. Cook having departed this life in March, 1899. He has two young daughters living. Mrs. Cook was a daughter of the late W. W. Stow.

N. P. CONREY.

N. P. Conrey, elected a Judge of the Superior Court of Los Angeles county at the general election in November, 1900, was born in Indiana, June 30, 1860. He received his early education in the common schools at Shelbyville, in that state, and in 1881 he was graduated from the Indiana Asbury (now De Pauw) University. He began the study of law in that year, at Indianapolis, in the office of Hon. Joseph E. McDonald, who was at one time United States senator. In October, 1882, he entered the senior class of the law school of the University of Michigan, and was graduated with his class in the following year.

Judge Conrey came to California in the spring of 1884. Settling in Los Angeles, he has always since lived there, engaged in the practice of law, excepting a few years' residence in Pasadena in the same county.

He was elected the first city attorney of Pasadena, and served a term of two years, 1886-1887.

During the years 1897-98 the Judge was a

member of the city board of education of Los Angeles, representing the second ward. He represented the seventy-fifth assembly district in the legislature of 1899, and at the special session of 1900. At the latter session he aided in bringing the long deadlock to an end by the election of Hon. Thomas R. Bard to the United States senate. His bill for reform of the civil service of the State failed of passage.

The Los Angeles *Express*, after the election of Judge Conrey to his present position, said of him, as follows:

"As a lawyer, the new Judge has by his conduct held the respect of the members of the bar, and it is largely to their good opinion that he is indebted for his promotion to a place on the bench. His record gives promise of a bright and useful career, and we have no doubt that when his short term expires, the good people of this county, regardless of party, will ask him to remain. This will be in line with the policy, as to local political offices, advocated by this paper early last summer, and now, of electing the right man, and when once elected, keeping him there, so long as he is both honest and capable, no matter what party may claim his allegiance."

Judge Conrey's judicial term will expire in the first week of January, 1903. It may be mentioned right here that he and his brother of the Superior bench, Hon. M. T. Allen, were former law partners in Los Angeles.

The Judge was for a time professor of medical jurisprudence in the College of Medicine, University of Southern California. He is a Knight Templar, and is married, and has a son and a daughter.

JOHN M. CORCORAN.

John M. Corcoran, Judge of the Superior Court of Mariposa county, California, was born in Covington, Kentucky, June 23, 1834. His parents were natives of Ireland. When he was three years old his parents moved, with him, to Cincinnati, Ohio, where he was educated in the district and Hughes High School. During his attendance at the High School he read a number of books of law. He crossed the plains to Salt Lake City in 1854, and came to California in 1855. He pursued mining and other avocations until he was admitted to the bar in 1860. From that date he practiced law in Mariposa and adjoining counties, until 1865, when he went to Idaho and followed his profession for six months. Returning to Mariposa, he was elected district attorney, and served during the years 1866 and 1867. He was elected County Judge in 1871, and was re-elected in 1875, serving eight years. In 1879 he was elected Judge of the Superior Court, and re-elected in 1884, 1890 and 1896. He is still the incumbent of

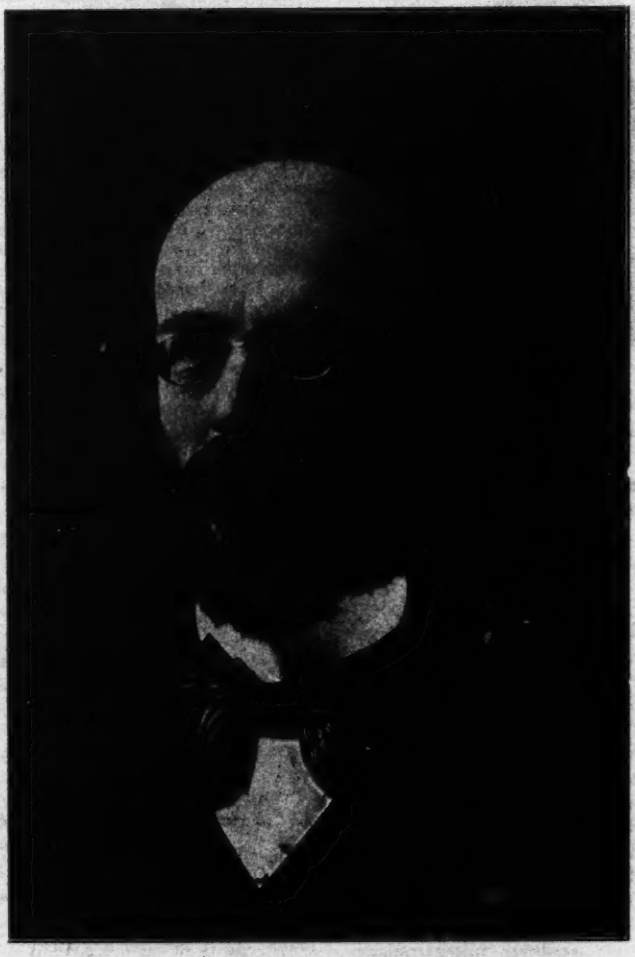
that office. He is one of the six Superior Judges who were elected when that court was created, in 1879, and adding his two terms as County Judge, he has been on the bench twenty-nine consecutive years.

JOHN F. DAVIS.

John F. Davis is a native of California, having been born on Angel island, Marin county, June 5, 1859. When he was nine years of age, the family moved to San Francisco, where he attended the North Cosmopolitan (now Hancock) grammar and boys' high school, at the latter of which he was graduated in 1876. In 1872-73 the family went abroad, and young Davis attended the village school in Germany in Glucksburg and Flensburg for about a year. After a post-graduate course in the San Francisco high school, he entered Harvard College in 1877, and was graduated at that institution in 1881, with high honors, and was one of the commencement speakers.

Returning to California, he attended the Hastings College of the Law for three years, and was graduated in 1884, immediately after which he was, with the entire class, admitted by the Supreme Court of California to practice in all the courts of the State, upon motion of Professor J. N. Pomeroy.

After practicing for a while in San Francisco, he went on a two years' trip abroad, during which he attended the lectures at the



William R. Daingerfield

University of Berlin, and at the Ecoledes Sciences Politiques, in Paris, and traveled throughout Europe.

Returning home, he settled in Calaveras county, where his brother was opening and conducting mining operations at the Esmeralda mine, and after being connected with much important litigation through the firm of Garber, Boalt & Bishop, in cases which took him east and to Alaska on important missions, he went to the Samoan islands to represent the American land claims before the Samoan land commission.

In 1890, as chairman of the Calaveras delegation, he made the fight for the nomination of John B. Reddick as Lieutenant-Governor, and later in the campaign, in company with George G. Blanchard, of El Dorado county, canvassed the second congressional district in advocacy of the election of Markham and Reddick. In 1892 Judge Davis defeated Grove L. Johnson by the decisive vote of sixty-five to thirty-six for the Republican nomination for congress, but was himself defeated in the campaign which followed.

Shortly after his defeat for congress, Governor Markham appointed him Judge of the Superior Court of Amador county, to which county he thereupon removed. In his wearing of the ermine for two years, Judge Davis gained a well-merited reputation for the fairness, the impartiality, and the correctness of his rulings. At the end of the term of his appointment, Judge Davis declined to allow his name to be presented to the convention as a candidate for Superior Judge, but announced his determination to confine himself to the practice of the law. This resolution he has steadfastly adhered to, and has built up a large and remunerative practice, not simply in Amador, but also in Calaveras and San Francisco. He has made a specialty of mining and water rights litigation.

In 1898 the Republican convention of the fourteenth senatorial district, comprising the counties of Amador, Calaveras, Alpine and Mono, nominated Judge Davis for state senator by acclamation, and very much against his inclination he accepted the nomination and was elected to that important office, which he still holds. He was appointed chairman of the committee on mines, drainage and debris. He at once impressed his personality on the senate as a tireless legislator, a keen debater, a resourceful parliamentarian, and one of the most eloquent orators of the State. As a senator his strength and ability have been most conspicuous in his unrelenting hostility to vicious legislation. Holding this office at a considerable sacrifice to his business interests, he has always strenuously contended that men of education have no right to shirk the responsibilities of active public life, and that in any attempt to do so they will prove themselves recreant to all sense of public spirit and civic duty.

Judge Davis is married, and has a family of two children. He is a member of the Harvard Club of San Francisco, the Greek Letter Fraternity of Beta Theta Pi, the Union League Club, and the Native Sons of the Golden West.

WILLIAM R. DAINGERFIELD.

William Raymond Daingerfield was born in Shasta, California, on June 9, 1857. In 1865 he came to San Francisco, was educated in the public schools of that city, and was graduated from the University of California at Berkeley in 1878. He was a member of the first class of Hastings College of the Law, under the tutelage of Professor John Norton Pomeroy, and was admitted to the bar in October, 1879. He was associated in the practice of the law with Wallace, Greathouse & Blanding and with O'Brien, Morrison & Daingerfield, of which latter firm he was the junior member. In 1892 he was elected to the Superior bench, to fill a vacancy caused by the death of Hon. J. P. Hoge. In 1894 he was elected Superior Judge for a full term of six years. At the latter election the successful candidates for municipal offices were, in the main, Republican, yet the two Judges of the Superior Court highest at the polls were Hon. James V. Coffey and Hon. William R. Daingerfield, whose political affiliations were Democratic.

Judge Daingerfield is a man of strong judicial temperament, and has been called "Judge" by his companions since his infancy. His father, Judge William Parker Daingerfield, was a Virginian, and his mother, Eliza Raymond Daingerfield, was born in Vermont. The elder Judge Daingerfield occupied the bench of the Ninth and Twelfth Judicial districts at various times from 1854 to 1879, under the old judicial system, and was the first presiding Judge of the Superior Court of the city and county of San Francisco at the time of his death, in May, 1880. A sketch of him appears in this History.

The present Judge Daingerfield is a man of wide information and great versatility. During his college experiences at Berkeley he

developed a fondness for mechanical and mathematical pursuits, and worked as a printer and proof-reader in the college printing office, with several associates, who afterwards became locally prominent in public life, notably Hon. Charles W. Slack and Dr. A. A. D'Ancona. Judge Daingerfield also mastered the art of practical telegraphy, and became an expert operator. His mathematical and scientific recreations extended over a wide range, and in surveying and astronomy he stood at the head of his class. In certain feats of mental arithmetic the Judge seems to be a prodigy, although he disclaims the ability to add a column of figures with even ordinary speed and accuracy. He can mentally compute the date Easter will fall on in any given year, tell what time approximately the moon rose on a given evening, and instantaneously determine the day of the week on which any date fell or will fall. He has also made contributions of great value to the art of nautical astronomy. Of late years he has become interested in the higher aspects of the game of whist. He is a well-known contributor to whist journals and whist columns, under his reversed initials, "D. R. W.," and he belongs to what is technically known as the "'New School,' at variance with the traditional school of "Cavendish" and Pole.

In his judicial work, Judge Daingerfield is rapid and indefatigable. He never forgets, in his demeanor toward the members of the bar that he is their servant, not their master. On the bench his manner is military and ponderously courteous, but at other times he is usually in lighter vein.

Most of his experience has been had in the trial of jury cases. Few of them have been sensational or of great public interest. The taxpayer suit of Mock vs. Santa Rosa, an equity case determining the liability of public officers for official misfeasance, is a striking exception. The recent case of Wall vs. Mines, involving the rights of claimants to an alleged charitable use, is another instance of Judge Daingerfield's abilities as a chancellor, which he has had too few opportunities to display.

J. W. DAVIS.

Ex-Judge J. W. Davis, of Tulare, was born at Norristown, Pennsylvania, on June 20, 1845. He is descended from Revolutionary stock, his grandfather, Captain John Davis, having been an officer in the army under Washington. His great grandfather, John Morton, was a signer of the Declaration of Independence, and gave the casting vote of Pennsylvania, whose delegation in the continental congress was, without him, evenly divided, thus placing his State in favor of the declaration, dropping it as the last block into the arch of liberty, giving it the name of the "Keystone State," and making the endorsement the unanimous act of the thirteen colonies.

Judge Davis received his early education in the schools of his native town, and afterwards was for three years a pupil in the high school at Lawrenceville, N. J. While there he enlisted in the Union army, at the time of the Confederate raid into Pennsylvania, in the year 1864, and when discharged at the expiration of his term of service, he returned to school. Six weeks later he was graduated with the first honor of his class. In less than a year and a half thereafter he re-entered the institution as an instructor, and passed nearly six years in that position, devoting his spare time to the study of law, under Charles E. Green, L.L D., of Trenton, N. J.

He was admitted to the bar by the Supreme Court of New Jersey in 1871, and soon thereafter turned his steps westward. But a short time elapsed until he was induced to return to the East, and there accepted a position as partner with Judge J. D. Bartine, at Somerville, N. J., where he spent some years in active and successful practice.

In 1881 he went to Arizona, and in 1882 he was appointed probate judge of Pinal county, by the Governor. In the fall of the same year he was elected to the territorial council, where he was chairman of the judiciary committee.

In 1884 the Judge came to California, and settled in Santa Rosa, where, the following year, he was appointed deputy district attorney. He served in that capacity till 1886, when he removed to Tulare, where he still resides. Here a partnership was formed between him and J. A. Allen, which continued till the election of the latter to the district attorneyship of the county, in 1898, when they were the oldest law firm in the county. This election compelled their dissolution, since which time Judge Davis has handled alone what has grown to be a successful and profitable law business.

In 1890 he was nominated, without effort on his part and without opposition, as the Republican candidate for Superior Judge of Tulare county, and made a very complimentary though unsuccessful run, his party being largely in the minority in that county.

Edwin A. Davis

In 1884 he was nominated for the assembly, and was elected.

He has been prominent in G. A. R. circles and in the Masonic fraternity, and has been a Mason for over thirty years, having passed through the chairs and become a past master in two states.

He is a studious, careful practitioner, preferring to keep his clients out of litigation rather than to extricate them, even in a satisfactory manner, after they have become involved. His record, as legislator, lawyer, and judge, is without spot.

EDWIN A. DAVIS.

Edwin A. Davis, Superior Judge of Yuba and Sutter counties, was born on the 30th day of June, 1839, in Livingston county, New York. At the age of ten years he was thrown upon his own resources, and began business by working in summer on a farm for $5.00 per month, while in winter he did chores for his board and went to school. At the age of seventeen he began school teaching, and in 1859 entered the State Normal College at Albany. In 1861 he enlisted in Company G, of the Twenty-seventh New York infantry, under Colonel Slocum, afterwards Major General Slocum, and participated in the first battle of Bull Run, where he was disabled and was soon after discharged and sent home. As soon as he was able he re-entered the Normal College and was graduated therefrom in 1864. Shortly after his graduation he was chosen principal of the Yates Polytechnic Institute of Chittenango, and had been in charge thereof about three months when he resigned to accept the chair of higher mathematics in Clinton Liberal Institute at Clinton, Oneida county, to which he had been elected.

Here, on January 1st, 1865, he married Miss Imogene Waggoner, daughter of Rev. W. H. Waggoner, a Universalist clergyman, the lady holding a corresponding position in the female department of the institute named. Here, also, in October, 1868, was born to them their only child, Wm. H. Davis, who is now the executive secretary of Governor Gage.

In 1867, Judge Davis received from Hamilton College the degree, in course, of bachelor of laws, which entitled him to practice law in all the courts of New York. At the end of the year 1868, he and his wife resigned their positions in the institute, and soon thereafter started for California, arriving in San Francisco by steamer on March 18th. 1869. They at once proceeded to Marysville, and have ever since resided in Yuba county. During the first five months of his residence in this State, Judge Davis taught school at Camptonville, at the close of which period he was elected a teacher in the city schools of Marysville. Here he taught until the end of the school year, July, 1870, when he formed a law partnership with Eastman & Merrill, under the new firm name of Eastman, Merrill & Davis. The firm then opened a branch office at Colusa, under the management of its junior member. This business arrangement lasted but a few months, however, and in February, 1871, the junior member returned to Marysville and opened an office by himself and has since conducted business alone. In the fall of 1871 he was elected district attorney of Yuba county, on the Republican ticket, and was re-elected in 1873. He was not a candidate in 1875, but in 1877 he was again elected to that office. In 1879 he was elected joint senator from Yuba and Sutter counties by over 500 majority. During his term as senator, he was chairman of the committee on education, and was a member of the judiciary and other committees. In 1887 he received from Tufts College, of Boston, Mass., the honorary degree of master of arts.

He was appointed by Governor Markham, Judge of the Superior Court of Yuba and Sutter counties in 1891 to fill the vacancy caused by the death of Hon. Phil. W. Keyser, and two years thereafter was elected to fill the unexpired term. At the end of that term he was again elected and is now serving his second term.

The foregoing sketch of Judge Davis is taken, substantially, from "A Memorial and Biographical History of Northern California," published at Chicago, in 1871, by the Lewis Publishing Company.

W. S. DAY.

W. S. Day, Judge of the Superior Court of the county of Santa Barbara, was born in Smith county, Tennessee, March 14, 1848. In 1859 he went with his parents to Arkansas, and thence in April, 1861, to Union county, Illinois. He was admitted to practice by the Supreme Court of that state at its June session, 1874, and by the Supreme Court of the United States in October, 1883. He was State's attorney for his county from 1876 to 1880, and a member of the Illinois legislature in 1887-8. He came to California in June, 1888,

and located at Santa Barbara. He was appointed Judge of the Superior Court in April,

1897, to fill the vacancy occasioned by the resignation of Hon. W. B. Cope, and was elected to succeed himself in November, 1899.

W. F. FITZGERALD.

General W. F. Fitzgerald had become distinguished in several lines or spheres before he settled in California. His activity in our State has been consonant with his previous career.

He was born at Jackson, Mississippi, on the 7th of February, 1846. His earliest education was received at a private school, which he left at the age of twelve years to enter St. Mary's College in Kentucky. While he was in that institution the Civil War opened, and he enlisted, on the 27th of March, 1861, at the age of fifteen, in the Confederate army. He served through the war, and was several times promoted for gallantry in action. The Vicksburg *Daily Herald*, many years afterward, when General Fitzgerald had become prominent in law and politics, thus referred to his brilliant military record:

"It was under the eye of the gallant Bob Smith that Fitzgerald, then a beardless stripling of seventeen, charged, with his company, the impregnable federal works, held by a large body of troops, strongly intrenched, with heavy siege guns, behind quadrilateral earthworks, and fell, sword in hand, pierced through the lungs, at the foot of the murderous parapet. He alone of his entire command succeeded in reaching the works. For his gallantry and reckless daring, young Fitzgerald was promoted to a first lieutenancy on that bloody field of battle."

At the close of the war the young soldier, then only nineteen years of age, commenced the study of law. He was admitted to the bar by the Supreme Court of Mississippi, on the 18th of February, 1868. Beginning practice at Jackson, the capital, he soon entered upon a very active professional and public life. He was twice elected city attorney of Jackson, and was afterward, for seven years, district attorney for the judicial district embracing Jackson and Vicksburg, the most important in the state. He espoused the cause of the Republican party, which party nominated him for attorney-general in July, 1881. He was endorsed by the Greenback and Independent Democratic parties. He ran five thousand votes ahead of his ticket, but was defeated, the regular Democrats carrying the state by a heavy majority.

In January, 1882, when the distinguished Democratic statesman, L. Q. C. Lamar, was re-elected to the United States senate, General Fitzgerald was the caucus nominee of the opposition for the place. The Vicksburg *Commercial* (Democratic) observed at the time, that, "Although the Democrats are in the majority, and will undoubtedly elect Senator Lamar as his own successor, the nomination of General Fitzgerald shows in what high esteem he is held by his party, of which he is the acknowledged leader in Mississippi."

The General was one of the delegates from the Cotton Exchange and Chamber of Commerce of the city of Vicksburg to the National Mississippi River Improvement convention, which met in Washington, D. C., in February, 1883. While attending that convention he was appointed by President Arthur a Justice of the Supreme Court of Arizona. The senate unanimously confirmed the nomination. The appointee had just been re-elected district attorney in Mississippi for a term of four years. He resigned this office, and assumed that of United States Judge in Arizona. This latter position he also gave up, after two years' incumbency, and removed to Los Angeles, California. There he quickly attained prominence as a lawyer and citizen. He became chairman of the board of directors of the Chamber of Commerce, a member of the Republican State central committee, one of the original prospectors and a director in the California Sewer-pipe Company, one of the largest manufacturing industries in Southern California, and was several times president of the Republican county conventions. In 1892 he was elected and served as chairman of the Republican State central committee.

Samuel K. Dougherty

On February 2, 1893, Governor Markham appointed General Fitzgerald an Associate Justice of the Supreme Court, in place of John R. Sharpstein, deceased, and he served for the unexpired term, ending with the close of the year 1894. In the latter year he was elected attorney-general of the State, and served the four years' term, which ended in January, 1899. In 1899 he was appointed by Governor Gage to a vacancy on the Superior bench of Los Angeles county, and he served the fractional term which ended in January, 1901.

Upon leaving the bench, as last stated, General Fitzgerald resumed the practice of law at Los Angeles.

He has a wife and a married daughter. Mrs. Fitzgerald is the daughter of the late Dr. C. S. Knapp, of Jackson, Mississippi, and niece of the late New York statesman, Daniel S. Dickinson.

SAMUEL K. DOUGHERTY.

Judge Dougherty was born at Berien Springs, Michigan, July 2, 1851. His preparatory foundation for the law was laid in Massachusetts, where he was fitted for college at Graylock Institute, in Berkshire county. He afterwards entered Amherst College, and took the full course, graduating with the degree of Bachelor of Arts, in 1878. He studied law for three years in the office of the bar leader and distinguished statesman, Lyman Trumbull, in Chicago, and took a three years' course in the Union College of Law in that city. Very soon after this he came to California and located at Petaluma, where he began the practice of law. He was early and generally recognized as a man of fine legal ability and high character, studious and laborious, and secured many friends and clients. After five or six years of general practice, he was elected one of the Judges of the Superior Court of Sonoma county, in 1888, to serve out an unexpired term. He has been twice re-elected. He is a man of superior judgment and patient investigation, and has the confidence and regard of the bar and of both political parties. He is Republican in his political views.

ROBERT FERRAL.

Ex-Judge Ferral like his close personal friend, the political economist, Henry George, was born in Philadelphia. He was born two years after Mr. George—October 13, 1841. He came to California with his father, and the latter's family, in 1852, arriving at San Francisco, by steamer, in June. Colonel E. D. Baker was a passenger on the same steamer. The elder Ferral was a journalist. He was a Democrat, while Baker was a devoted Whig. The two gentlemen had a clash on the steamer, but it did not go beyond a war of words. We believe that politics had nothing to do with it.

The Ferral family settled at Santa Rosa, where the future Judge grew up, attended school, and decided to follow his father's profession. He was an editor and journalist for many years, both before and after his admission to the bar, in California and in Nevada. He was admitted to the bar at Aurora, in the latter state, in 1863. Returning to California, he became a figure in politics on the Democratic side, and at the legislative session of 1869-70, when there was a Democratic majority in both branches, he was elected clerk of the assembly. At the next session, 1871-72, when the senate was Democratic and the house Republican, he was made secretary of the senate. The custom was, and is, that the house shall be first called to order by the person who was clerk of that body at its last session. Mr. Ferral, who had been clerk at the eighteenth session, accordingly called the house to order at the nineteenth session. He then went into the senate chamber, where he was soon installed as secretary. At the twenty-first session, 1875-76, the legislature was again Democratic in both branches, and Mr. Ferral was again made clerk of the assembly. He was assistant district attorney in the years 1874 and 1875.

During the years 1872 and 1873 Mr. Ferral was an editorial writer with Henry George on the *Evening Post*, San Francisco. During this period, and later, he appeared now and then on the lecture platform. He sometimes addressed the Dashaway Temperance Society. His lecture on Aaron Burr may be found in the *Post* of March 3, 1873. He was the first and only Judge of the City Criminal Court, which was created in 1876, and passed out of existence with the old constitution in January, 1880. He stepped from that place to the bench of the new Superior Court, being one of the first twelve Judges of that tribunal chosen under the present constitution. He drew a full term, and served it out, leaving the bench with the opening of the year 1885.

Since that time Judge Ferral has been engaged in law practice, his business being nearly all in the criminal line. He is a ready and capable lawyer, of high reputation, and a very agreeable and well-liked man personally. He

has a family, owns his home, and has a fine income from his practice.

WILLIAM HUDSON GRANT.

William Hudson Grant was born in Canton, Lewis county, Missouri, on the 31st day of August, 1853.

His paternal ancestor, Donald Grant, was a Scotch Highlander, who, with the greater part of his clan, went out in 1745 in support of the claims of his hereditary sovereign and kinsman, "Prince Charlie" (Charles Edward, the Pretender), and followed the fortunes of that ill-fated prince through all his last campaign,

which terminated with the disastrous defeat at Culloden, in 1746. After that battle, young Donald, with a price upon his head, escaped from Scotland, crossing over to France in a fishing boat, and from France emigrated to the colonies, settling in Virginia. He lived there long enough to participate in the stirring events attending the Declaration of Independence and the War of the Revolution which followed. Though an old man then, he and his youngest son, John, were members of the famous light horse cavalry, the daring brigade of Virginia.

The maternal ancestor of our subject was a French Huguenot, who, after the revocation of the Edict of Nantes, (Oct. 23, 1685), also emigrated to America.

As might have been expected, the union of these two strains of the blood of political and religious exiles, produced in Judge Grant, a man of little love for "authority," who, in all his professional career, both as practitioner and judge, has held steadfastly to the doctrine that "nothing is settled till it is settled right." In his adherence to this doctrine he has at times astonished the bar by refusing to be guided by well-established precedents, which, in his opinion, were not sound in principle. He was admitted to the bar of the Supreme Court of this State in April, 1877.

In the year 1890, at the age of 37, he was elected Judge of the Superior Court of Yolo County, and served one term. In 1896 he sought a re-nomination, but was defeated in the Convention by the "machine" element of his party, whose ill-will he had incurred by refusing to pay an "assessment" of $1,000.00 levied for the purpose of "influencing" voters at the election of 1890. In that campaign he met all legitimate expenses, and his refusal to pay the so-called "assessment" was to discountenance political corruption.

During the early part of his term as Judge of the Superior Court he, at the request of the Governor, relieved Judge E. A. Davis, of Yuba and Sutter counties, in the trial of one of the election fraud cases which grew out of the division of Colusa county. Later, at the request of the Judges of Sacramento County, he heard and determined the celebrated case of Livermore vs. Waite, which involved the validity of the "Senate Constitutional Amendment, No. 23," which provided for the removal of the State Capital from Sacramento to San Jose. His opinion filed in that cause was commented upon by able men of the bar as a well-written, logical and forceful document.

In 1894, during the great railroad strike, a train was wrecked in Yolo County, which resulted in the death of several persons, and a number of the strikers were arrested and brought before Judge Grant for trial upon the charge of murder. Acquittals were secured in all of the cases, except that of S. D. Worden, who was convicted of murder in the first degree, and sentenced to death, but this sentence, after affirmance by the Supreme Court, was commuted by Governor Budd to life imprisonment.

Judge Grant has generally been considered a close reasoner, and a hard student, whose effort was always to discover the basal principles underlying a cause and rest his decision thereon, rather than upon precedents which did not appeal to him as authoritative. He is now located at Woodland, and at the age of 47, is in the prime of his physical and professional usefulness.

E. M. Gibson

E. M. GIBSON.

Col. E. M. Gibson was born at Carmel, Hamilton county, Indiana, on the 13th day of June, 1842. His education was in country and district schools, and five months in a Quaker seminary in that county, and two years in the law department of the Columbian University in Washington city, where he graduated in June, 1867. A few weeks thereafter he was admitted to the bar of the Supreme Court of the District of Columbia. He came to California first in 1870, but located in this State in 1873, and has been here ever since. He was district attorney of Alameda county for four years and later Judge of the Superior Court of that county for six years.

The Colonel's family are Americans and his ancestors have been in this country for two hundred years. His father and mother were born in North Carolina, where his grandparents all lived and are buried. His grandfather Gibson was a soldier in the American army during the war of the Revolution. His mother's maiden name was Winslow and her ancestors came over on the Mayflower. His mother's mother was a Stanton of North Carolina, and belonged to the same family with E. M. Stanton, who was Secretary of War under Lincoln.

Colonel Gibson won his military title in the Civil War, through which he fought heroically, suffering the loss of a leg. He has a wife and three accomplished daughters. He resides at Oakland, and is at present associated in law practice with Ben. F. Woolner, (Gibson & Woolner).

C. V. GOTTSCHALK.

Judge Gottschalk was born in New Orleans, Louisiana, in 1827. He received his first instruction from private tutors; afterwards he attended private schools until 1840, when he went to Philadelphia and studied in a preparatory school, from which he entered the University of Pennsylvania. He returned to New Orleans in 1844 and engaged in commercial pursuits, until 1850, when he left for California, arriving at San Francisco on the 4th day of August of that year. After remaining a year in San Francisco he went to the mines, arriving at Mokelumne Hill in September, 1851. He followed mining for several years with indifferent success, in the vicinity of Mokelumne Hill and San Andreas. He early took an active part in politics, on the Democratic side, believing then as now that the Democratic doctrine, as taught by the fathers of our country, is the true policy for a republican government.

Judge Gottschalk has occupied various positions in Calaveras county, having been deputy sheriff, deputy county clerk, and district attorney, which last position he resigned in December, 1879, to take his seat on the bench of the Superior Court, to which office he was elected in that year. He has been re-elected to the same office three consecutive times, having been on the bench since the adoption of the present constitution.

There are five other Judges who have been on the bench of the Superior Court in California ever since the court was created, twenty years ago. These are Judges Greene of Alameda, Jones of Trinity, Arnot of Mono, Corcoran of Mariposa, and Hunt of San Francisco.

JOHN C. GRAY.

John Carleton Gray was born at Dresden, Lincoln county, Maine, February 2, 1837, being the fourth of nine children born to Hon. John L. and Lydia (Carleton) Gray, four sons and five daughters. Judge Gray is the only remaining son. Two of the boys died while yet young; and the third at the age of forty-two years, after having followed the sea twenty-five years, nearly twenty of which he was master of a good ship. In 1877, Captain Gray was presented by the citizens of Honolulu with a silver service for carrying to them the official notice of the adoption of the reciprocity treaty between the United States and the Sandwich Islands.

Judge Gray's ancestors came from England and the north of Ireland, and in the Revolutionary War were found in both armies, as some of them held important positions in the British service before the struggle began. Both his parents were natives of Maine, where his mother died in 1874 at the age of sixty-seven years, and his father in 1897, at the age of ninety years. His sisters are all living.

The family moved from Dresden to China, Maine, when our subject was but three years of age. He lived upon a farm until he was eighteen years old, when he bought the remainder of his minority and started out in life for himself. He taught school to get the means to fit himself for college, which he entered in 1859, at Waterville, Maine, then known as Waterville, now as Colby University, where he remained but two years. He then entered the law office of Hon. A. Libbey at Augusta. There he remained until admitted to practice in the highest court of that State. His admission was on the 16th of June, 1863, and on the next day he started for California, arriving

in this State July 19, of the same year. He went to Sacramento, where he found work for a year and a half as night clerk at the What Cheer hotel. On the first of January, 1865, he removed to Butte county, and taught school for the next seven years, five of which were in Oroville, as principal of the grammar school, after which and about the first of June, 1872, he opened a law office in Oroville, at which place he has ever since resided.

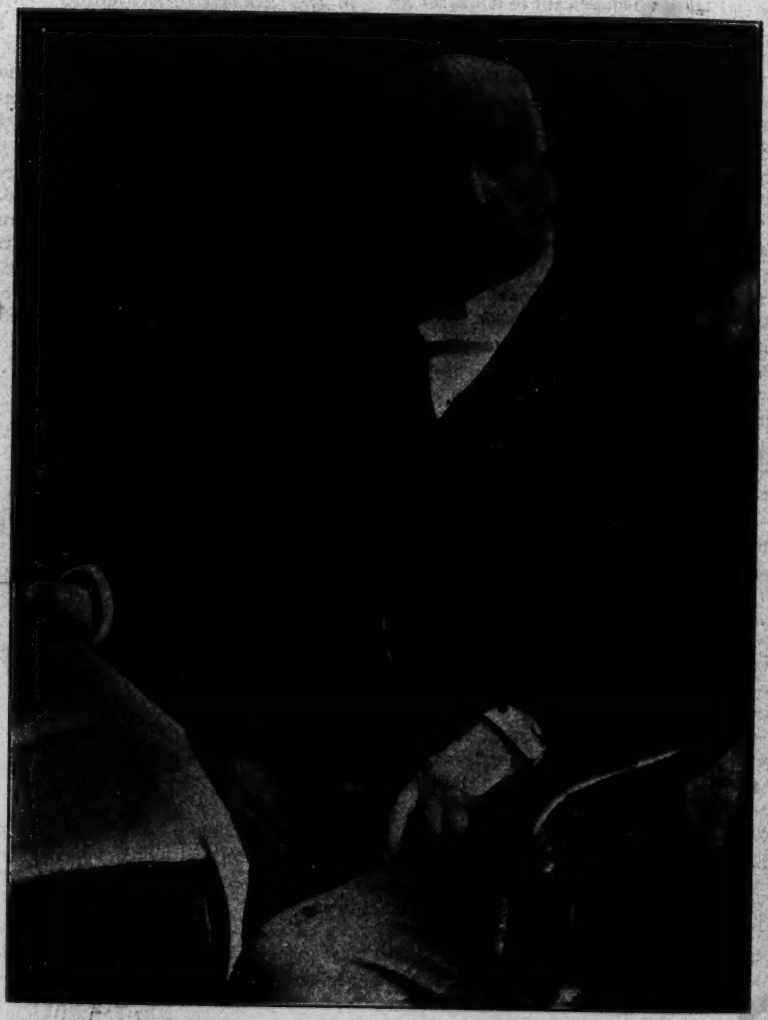
The next year, 1873, he was elected a member of the assembly and took his seat in the legislature the following December. The sessions were then four months long, and a great amount of important business was transacted that winter. The codes had become the law of this State on the first of January, 1873, and the bench and bar had seen and tested

them nearly a year, and the number of amendments that were presented to the legislature at that session were nearly as large and voluminous as the codes themselves. The judiciary committee of the assembly, of which Judge Gray was a member, was presided over by Judge Williams, of El Dorado county, and contained such men as Hon. John F. Swift, Hon. M. M. Estee, Hon. J. F. Cowdery, and many others, of equal learning and fame. Before it, almost nightly, was the code commission, at the head of which was Hon. Creed Haymond, then in his best years, and leading lawyers from every part of the state, who did not take kindly to the innovations made by the code in their forms of pleading and practice. The sessions of that committee ran into the morning hours, and there were six of them each week, and the work there done, familiarized each member with the codes to that extent that each had a far better knowledge of it than other lawyers in the State. Each member went home equipped to take a leading part in the litigation of his own bar. From this school of law Judge Gray returned to Oroville, and in a very short time took a commanding place in the profession.

In 1874, at the earnest request of the leading citizens of Oroville, he became part owner and editor of the Oroville *Mercury*, which he managed in connection with his law business, although as he often said, his editorial work had to be done at night, and on Sunday. The paper under his management soon took the first rank in the county, and maintained it as long as he was at its head. In 1878, he disposed of his interest in it, and devoted his whole attention to his legal business, which was rapidly increasing and would not permit of his giving his attention to other matters, as can be seen by a reference to the Supreme Court reports. He also was largely engaged in procuring government titles to agricultural and mineral lands, and some of the arguments made by him before the commissioner of the general land office, and also before the secretary of the interior, were among the best received by those officers, and have been used by others in later considered cases.

He received the nomination of the Republican party for the office of district attorney in 1884, and after a hot contest was elected for a term of two years, and was re-elected by a much larger majority, but refused to run for a third term. It was during his term of office that some seven criminals, forming one of the worst bands of outlaws in the state, were sent to prison for terms varying from one to sixty years, thus ridding Oroville of a menace that had hung over it for years.

In 1890, he received the nomination of his party for the office of Superior Judge, a place then held by Judge P. O. Hundley, one of the most popular men in the northern part of the State, and who was his opponent in the contest, but which resulted in the election of Judge Gray by a large majority. His duties on the bench, as is the case with all judges of interior counties, where farming, mining, fruit-raising, lumbering and other interests are carried on, embraced a wide field and gave full play to a brain full of common sense. That his administration of affairs gave satisfaction was evidenced by the fact that when he came up in 1896 for re-election he received the largest majority ever given to a candidate in Butte county. He is now near the close of



William E. Greene

his ninth year on the bench, and is regarded as a man of more than average abilities for the place. Fairness and honesty of purpose is accorded him on all sides, and by all parties, who have had business in the courts before him.

His fraternal life began with his entrance into college, where he joined the Delta Kappa Epsilon fraternity. He has ever since been a devoted member of it, often inviting to his home such young men as he learned belonged to the organization. He also became a Mason, and advanced as far as the order of the Knights Templar, in each of the several divisions of which he became the presiding officer, places which he filled with ability. He is also an Odd Fellow, being an encampment member. As age creeps on, he is little inclined to visit the lodges, claiming that in his day he did his full duty, and younger men should be given the places of honor.

Having worked upon the farm in early life, it was not unnatural for the Judge in after years to turn his attention to the farm in this State, where the land yields its choicest returns, with but a tithe of the labor required of the farmer in the harsh and inhospitable climate of Maine. Accordingly, we find him turning his attention to fruit-raising as early as 1886, being the pioneer in that business in his part of the county. He cleared the land of the dense forests, planted trees, and now has one of the "show" places of this region, an orchard of some 4,000 peach trees, fifty acres of White Adriatic figs, and one hundred acres planted to olives, all in bearing and yielding bountiful harvests. He has extensive pickling works, the crop reaching a number of thousands of gallons, while his extensive oil machinery, as good as can be found in America, annually turns out hundreds of gallons of pure, sweet, delicious olive oil. Here he spends a portion of his time when not occupied with official duties.

On the 6th day of October, 1869, he was married to Miss Bella R. Clark, who had been one of his pupils, and for a time had been one of the teachers in the school of which he was principal. Of this marriage, there were three children, one son and two daughters, the eldest of whom, Helen, died in infancy. The son, Carleton Gray, lives in Oroville, and is following his father's profession, while the youngest, Miss Ida B. Gray, is the official reporter for his court.

His married life was a happy one, for, though his wife was for many years in poor health, she yet possessed a sweet, lovable disposition, and the rare good judgment almost always found among the women of Scotch parentage. Their home was their paradise. Her death took place on the 14th of November, 1897, in San Francisco, where she had gone to attend the wedding of her son.

In person, Judge Gray is six feet tall, weighs about two hundred and twenty, is of florid complexion, and of a genial, happy disposition.

WILLIAM E. GREENE.

William Ellsworth Greene, who has been a Judge of the Superior Court of the State of California ever since that Court was created, was born November 14, 1836, at Farmington, Maine. He came of a well-known New England family of that name, many of the descendants of which have attained prominence in professional life. The first of the family in this country came from England about the year 1635, and settled in Malden, Massachusetts. About eighty years later the family removed to Leicester, in the same state, where many of the members continued to reside as late as the War of the Revolution. It was there that Judge Greene's grandfather and three granduncles, and his great grandfather and three great granduncles at that time resided, all of whom rendered military service to the United colonies in their struggle for independence. Judge Greene was prepared for admission to Bowdoin College at sixteen years of age, and later entered that institution, and was, in due course, graduated therefrom with the degree of A. B., and three years later was given the degree of A. M. He came to this State in 1863, arriving in San Francisco on August 17th of that year, and in the same month took up his residence at Stockton. He engaged in teaching there for a time, but in the early part of the year 1865 entered upon the practice of his profession. He was elected assemblyman of San Joaquin county that year and served in the session of the legislature of 1865-66. He continued in the practice of his profession until the first Monday of January, 1868, when he began his long judicial career as County Judge and ex officio Probate Judge of San Joaquin county, to which position he had been elected the previous year. He held that office until April 30, 1874, when he resigned to take charge of an extensive lumber concern in the northern part of the State, in which he had become largely interested. Having closed out his interest in that

concern in the early part of the year 1875, he removed to Oakland, California, and resumed the practice of the law, opening an office in San Francisco and later in Oakland.

In 1879 he was elected a Judge of the Superior Court of the State in and for the county of Alameda, and entered upon the discharge of the duties of that office on the first Monday of January, 1880, since which time he has continuously held that position, having been three times re-elected. His present term of office will expire on the first Monday of January, 1903, at which time, if he shall complete his present term of office, he will have been in the judicial service of the State twenty-nine years and four months. Of all the Judges who went upon the Superior Court bench of the State when that court was first organized, only six remain, who have continuously held that office to the present time, and Judge Greene is one of the six.

A distinguished member of the bar of this State, who is very familiar with Judge Greene's judicial career, recently, in referring to his long judicial service, spoke of him as follows, viz:

"The hold which he has so long retained upon the public confidence as a lawyer and a Judge, and which grows stronger with time, is due to his industry, legal ability, broad general knowledge and his sole aim to administer justice according to law. His chief mental characteristics are those which impel him instantly to the precise matter in dispute in all controversies, whether involving questions of law or fact, a retentive memory, a comprehensive grasp of legal principles, a rapid application of them to the matter in hand, keenness of perception, accuracy of judgment, ability to discover truth where hidden by motives of deception, and, finally, the ability to impartially consider and comprehend the whole case, and reach conclusions thereon, fortified by reason, logic and sound legal discretion. These qualifications eminently fit him to fill and adorn a judicial position. The facility with which he is able to transact a large amount of legal business in a comparatively limited period of time, and consequently to administer justice economically, has long been a matter of common observation and remark, by all who are acquainted with his judicial attainments."

This is a very high encomium, and yet it is quite justified by the reputation which Judge Greene has acquired for judicial ability, unswerving integrity and untiring industry. In 1897, when the position of United States District Judge for the Northern district of California was made vacant by the appointment of Judge W. W. Morrow to the United States Circuit bench, Judge Greene was very earnestly and very strongly recommended to the President for appointment to fill such vacancy, by many distinguished men of the bench and bar, and by many others prominent in private life. In these recommendations Judge Greene was declared to be a man of ripe judgment, of superior ability and unquestioned honor and integrity. They declared that he was liked best by those who knew him best, that he was distinguished for fearlessness in his decisions, and endowed with the courage so essential to the character of a good Judge, and they pointed particularly to his long and splendid record on the bench.

We have had occasion, in speaking of the strong men of our bench and bar, to refer to some of them as being strong also physically. Judge Greene inherited a splendid physique, and this, by reason of his exemplary habits, is still preserved to him. The trite phrase, "in the prime of life," applies to him now, and probably will for many years to come, although "three-score years and ten" are not far off.

In 1869 Judge Greene married Anna Isabel, daughter of Mr. and Mrs. W. W. Webster, then of Maplewood, Massachusetts. Mrs. Greene died in 1893. Their children are Carlton W., Mabel E., Ethel A., and Laurence L.

CHARLES N. FOX.

Charles Nelson Fox, Judge of the Supreme Court in 1889-90, was born in Redford, Wayne county, Michigan, in a log cabin, surrounded by a dense forest, on the 9th of March, 1829. Like all the pioneers of that country, his parents were poor, and such schooling as he received was had in the traditional log schoolhouse, for a few months only in each year, and to attain this he was compelled to walk one, and sometimes two miles to school. Dividing his time between the school and the farm until he was fifteen, at that age he relieved his parents of his support, with their approval, and went to Ann Arbor, determined to make his own living, and if possible work his way through the university, then just opened. Securing a place where he could work for his board and lodging, he matriculated at the university, and spent some time in the study of Latin and Greek, when he was taken sick. This involved a loss of six months in

Chas. N. Fox

his studies, and postponed for a year the period of his possible graduation. At that time the only course of study open at the university was the classical course. After much reflection, young Fox concluded that in the struggle of that conclusion, but right or wrong, he which must be spent in the university would not be compensated by the benefits derived from the course of study then opened to him. He has many times since doubted the wisdom of life for a poor man, the four or five years acted upon it, and abandoned the university for a printing office, where he mastered every department of the printer's art, as then practiced in Ann Arbor. At an early age he became somewhat noted as a country editor. From infancy he had known intimately and been a favorite of General Lewis Cass, and he early began to take an active part in politics. In 1848, when only nineteen years old, he made his first speech to a mass meeting, when, as president of the Young Men's Democratic Club of Ann Arbor, he opened the campaign of 1848 with a speech, and introduced General Cass, who had insisted that his young friend should speak first, and expressed his gratification at being introduced by one of his own boys. The General had before that offered Mr. Fox a place at West Point, which he had declined to take and which declension he has ever since regretted. At that time he preferred the navy, but into this the General refused to place him, unless he first got his father's consent—a thing which young Fox believed would be impossible, and so never made an effort. At twenty-one he was made chief deputy in the office of the recorder of deeds of his county, and for two years was practically the chief of that office. During this period he was also elected city recorder of the city of Ann Arbor. A vacancy occurring in the office of mayor, he served ex-officio in that capacity for a portion of the term.

Retiring from public place, he entered the law office of Kingsley & Morgan to complete the study of the law. While yet a student in this office, he attracted the favorable notice of the great commercial agency of Bradstreet & Co., by his peculiar ability to "read between the lines" and understand the motives and intentions of men—a faculty which he has ever since retained in a large degree,—and he still is a trusted counsellor of that great commercial house. He was admitted to the bar of the Supreme Court of Michigan in 1856, and in 1857 his parents and all other members of the family having already settled in California, he came hither, arriving in August of that year, immediately locating in the county of San Mateo. In November, a vacancy occurring in the office of district attorney, he was appointed to fill it, and by successive elections held that office for five years, when he declined further election.

In the early struggles of the Spring Valley Water Works to gain a foothold in San Mateo county, he was retained against them, and for some time succeeded in preventing them from acquiring any rights necessary to the construction of their works. Finally, having been beaten in all litigation, the company retained him to acquire such rights as they desired, and he at once went to work, and without litigation secured for them all that they had theretofore been seeking through the courts. He so managed the business of the company in that county that for ten years it had no suit there of any kind.

Upon the organization of the San Francisco & San Jose Railroad Company, Mr. Fox became the local attorney of that corporation to secure the right of way through San Mateo county, and continued to act in that capacity until the road was sold out to Newhall & Co. During that time he became the general attorney of Charles McLaughlin, and ultimately the attorney and president of the Western Pacific Railroad Company—a place which he held until that road was sold out to the Central Pacific Company. These duties having brought him to San Francisco, he was appointed general attorney of the Spring Valley Water Works, more than thirty-five years ago, and held that position until he went on the Supreme bench in 1889.

In his early practice in the State he became somewhat noted as a criminal lawyer, and met with more than ordinary success in that line of practice, but after being so much engaged in corporation law, he practically withdrew from criminal practice, and has since given that department of law very little attention.

During Mr. Fox's incumbency of the office of district attorney, a statute took effect requiring that delinquent taxes should be collected by suit, and for two years nearly all the heavy taxes of his county, San Mateo, were contested, but never with success. Almost immediately upon retiring from office he was retained to defend against similar claims, and then raised the question of the unconstitutionality of the revenue laws then in force, by

reason of the large exemption from taxation which were made by those laws. Upon this point he prepared an elaborate brief, which was not only used in the courts, but in the legislature, and he and others who subsequently joined him in the contest, kept up the fight until at last the Supreme Court sustained the point and held the exemptions to be unconstitutional. The legislature then changed the laws, and since that time taxation in this State has been perhaps more uniform in any other state in the Union.

Mr. Fox was twice named, but refused to be a candidate, for judge of the old Twelfth District Court. Several times he was urged to accept legislative and congressional position, but always refused, except at the first session of the legislature under the new constitution of 1879, when he was chairman of the judiciary committee of the assembly. Chancellor Hartson, who was a member of the same body, said of Mr. Fox and the work that devolved upon him at that time: "I would rather spend the time of this session in the penitentiary than in his position."

The constitution had wrought many radical changes. All the laws of the State had to be brought into harmony with it, and at least three-fourths of all the bills went to his committee. While the statutes of that session show a great amount of work accomplished, the burden of his work and that upon which he did the State the best service, is found in the mass of bills which did not get into the statutes. It is said that in the hundred days he reported a thousand bills for indefinite postponement, and very few bills so reported were ever passed. Considering the rapidity with which one in his position was compelled to think and act, under such circumstances, it is a curious fact that every measure that was passed against his opposition, on the ground of unconstitutionality, and that has since come up for judicial determination, has been declared to be unconstitutional. Perhaps the most prominent of these was the revenue bill passed at that session, against which he voted and spoke, and filed a written protest. At the very next session the legislature passed a new bill, bringing it into harmony with the views which he then expressed.

Judge Fox was commissioned by Governor Waterman a Justice of the Supreme Court in June, 1889, in place of Hon. Jackson Temple, resigned, and he served to the close of the following year.

In the seventeen and a half months which covered Judge Fox's period on the Supreme bench he did a larger volume of work than any other man connected with the court, and much of it was in cases involving grave questions of corporation and constitutional law. His opinion in the Jessup case is the only one, so far as we know, that has ever been attacked, and that was only by the counsel for the losing side. It has now become the acknowledged rule of decision all over the United States. On a question of constitutional law, we believe he has never been overruled in any position taken by him, either on the bench, in the legislature, or at the bar. In one case which the United States Supreme Court decided against him, he told his client in advance that it would be so; his object was, however, to force a direct decision on the point involved, as distinguished from an inferential one, so that he might use it in another case afterwards, and he succeeded.

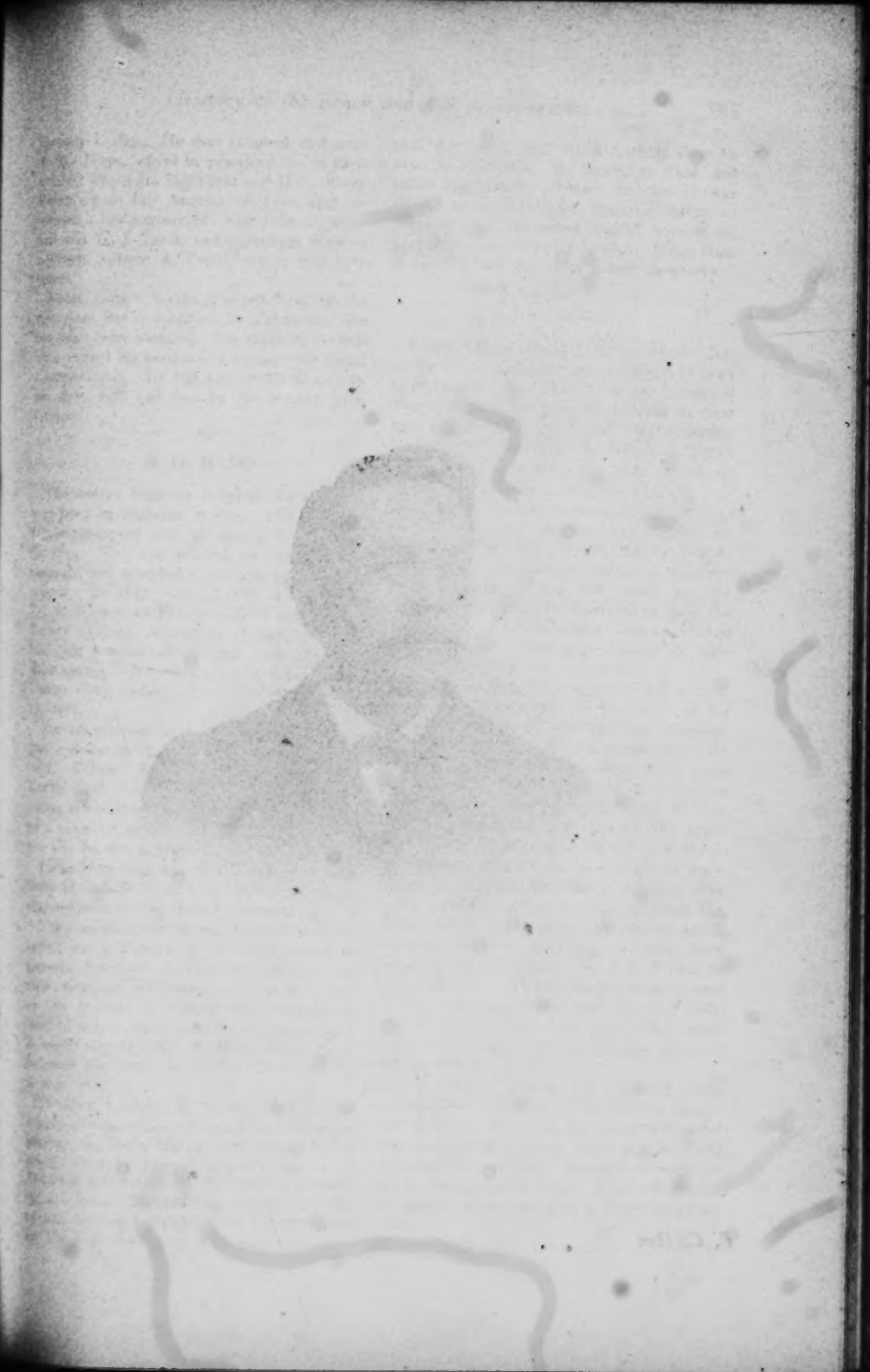
For twenty-five years before his elevation to the Supreme bench, Mr. Fox had his office in San Francisco. Besides his duties as attorney of the water company, he was engaged in general practice, about half of the time in partnership with A. and H. C. Campbell, and the balance of the time in partnership with M. B. Kellogg, until the year 1889, when F. R. King was added to the firm.

Mr. King, whose father was the distinguished Thos. Starr King, withdrew altogether from the legal profession in 1895. Since that time Judge Fox has been in partnership with Mr. Roscoe S. Gray.

Judge Fox has three children living, two of whom have married. Since the year 1875 he has resided in the city of Oakland.

JAMES A. GIBSON.

Ex-Judge James A. Gibson, one of the able men at the Los Angeles bar, is a native of Boston, Massachusetts, and was born August 21, 1852. He came to California in 1874 and located first at San Bernardino. He was admitted to the bar there, in the old Eighteenth District Court, June 13, 1879; and to the bar of the Supreme Court, April 19, 1882. In 1884 he was elected Superior Judge of San Bernardino county, on the Republican ticket, for the term of six years, from the first Monday in January, 1885, and served until in May, 1888, when he resigned. In the latter year he was appointed one of the commissioners of the Supreme Court. This office he held until



E. C. Hart

January 1, 1891. He then resigned, and went to San Diego, where he practiced law in partnership with John D. Works and H. L. Rives. Removing to Los Angeles, in June, 1897, he formed a law partnership with John D. Bicknell and W. J. Trask, under the firm name of Bicknell, Gibson & Trask, which still continues.

Judge Gibson is the vice-president of the American Bar Association for California. He has been twice married. The death of his first wife caused his resignation as Supreme Court Commissioner. He has four children, two by his first wife and two by the present Mrs. Gibson.

E. D. HAM.

The worthy Superior Judge of Napa county was born in Alabama in 1839. His father, a farmer, removed with his family to Arkansas in 1854. The son worked on the farm in summer, and attended a subscription school in winter. In 1857, through the aid of Hon. David Walker, of Fayetteville, he entered Arkansas College, afterwards studied law, and had just commenced practice, when the Civil War opened. He went north and joined the Union army under General Curtis, February 15, 1862.

For his conduct on the field he received unqualified commendation from his superior officers. Colonel B. O. Carr, one of General Curtis' staff, said: "Ham was such a bright young fellow that he was soon given command of a corps of scouts, and before the close of the war he was a Major."

Judge Ham later was on the staff of General John M. Schofield, who was afterwards General-in-Chief of the United States army.

The confidence the young Captain then inspired was evidenced by an order issued by General Schofield at Cassville, October 13, 1862, directing all commanders in the army of the frontier to furnish the Captain, as chief of scouts, with whatever number of men he might require. His promotion to be Major followed the battle of Prairie Grove in December, 1862.

President Lincoln, in March, 1865, at the request of Major-General Steele and Governor Murphy, appointed Major Ham United States district attorney for the western district of Arkansas, comprising eleven counties, to which the Six Indian Nations were added. In 1868 he was appointed Judge of the Circuit Court for the fifth district of Arkansas, and occupied that bench until April 1, 1874, when he came to California. He located at Napa, and began the practice of law. In 1890 he was elected as a Republican. Superior Judge of Napa county. He served the full term of six years, and was re-elected in 1896. Judge Ham is married, and has three grown daughters.

E. C. HART.

Elijah Carson Hart, a Judge of the Superior Court of Sacramento county, was born near Carson City, Nevada, in an immigrant wagon, his parents being at the time on their way across the plains, bound for California. It was in the year 1854. At the age of twelve years he began to learn the trade of printer, which being acquired, he worked thereat, setting type on the same newspaper, until he was twenty. He then became local reporter on the Marysville *Daily Appeal*. In the following year he took editorial charge of the Oroville *Mercury*, editing the paper for six months. He then went to Willows, now the county seat of Glenn county, and established the *Journal*, a weekly paper, which he published and edited for six years.

Judge Hart began the study of law in 1884. It was at Sacramento, in the office of his brother, A. L. Hart, who had been attorney-general of the State for the years 1880-81-82. In August, 1885, he was admitted to practice by the Supreme Court. In the following spring he was elected city attorney of Sacramento, and served the term of two years. He was elected a member of the assembly in the fall of 1888, for the twenty-eighth legislative session—which opened in January, 1889.

He continued uninterruptedly in public life, being elected city attorney again in the spring of 1890, and, for a third time, two years later. He resigned the place at the end of 1892, to enter the State senate, having been elected to represent Sacramento county in that body. During all this period he kept in law practice in so far as it did not interfere with his official duties.

In the fall of 1896 he was elected a Judge of the Superior Court of Sacramento county, and went on the bench, just as his senatorial term expired, in January, 1897. His term will expire in January, 1903. He has held court for his brother Superior Judges in quite a number of other counties, presiding in many important cases.

The Judge was married, at the age of

twenty-one, to Miss Addie Vivian, a niece of the famous Indian fighter, Kit Carson.

Hon. A. L. Rhodes, ex-Justice of our Supreme Court, now a Judge of the Superior Court at San Jose, is an uncle of Judge Hart, and came across the plains in the same train of ox-teams with the Judge's parents.

J. C. B. HEBBARD.

J. C. B. Hebbard, Judge of the Superior Court of San Francisco, was born in Canada on April 11, 1854. He came to California in 1862, and was educated in the public schools of Nevada county and at the College of St. Augustine at Benicia. He was admitted to the bar by the Supreme Court in May, 1879, and began his law practice in San Francisco. He was married in 1889 to Miss Martha Schroth, daughter of Charles Schroth, one of San Francisco's well-known leading pioneers. Judge Hebbard was elected to the bench of the Superior Court of San Francisco in 1890, and re-elected in 1896. His current term ends in January, 1903. His name became particularly and deservedly familiar throughout the United

States because of his judicial action in the celebrated case of Fox vs. Levy et al., universally known as the Hale & Norcross case. That case was commenced at San Francisco in the year 1891, by the plaintiff, a stockholder of the corporation, Hale & Norcross Silver Mining Company, who charged that defendants, some of whom were directors of the corporation, having secured complete control of its affairs, conspired to defraud, and did, in fact, defraud it of property to the value of $2,100,000. Trial of the case was commenced on the 18th day of November, 1891, the result being that Judge Hebbard rendered a decision whereby he awarded to plaintiff a recovery of $1,011,835, and appointed a receiver to enforce collection of the judgment, to secure the benefit thereof to the stockholders of the corporation. Upon an appeal from this judgment and order, the Supreme Court of the State, taking occasion to advert to the large amount in controversy, the difficulties presented by the subject of litigation, the great length of the trial, the immense mass of evidence, and the ability, industry and ingenuity of counsel, which combined to raise an unusual number of difficult questions for consideration, reduced the recovery awarded to plaintiff to the sum of $210,197.30, directed a new trial of the case as to certain issues, and affirmed the order appointing a receiver to collect the judgment.

Afterwards the case encountered many vicissitudes of law, the upshot being that in October, 1898, plaintiff concluded to accept the recovery first confirmed by the Supreme Court, rather than risk further uncertainties, and consented to a decision by which final judgment for that amount entered. Thereupon the receiver, under the direction of Judge Hebbard, on November 7, 1898, collected for principal and interest on the judgment the sum of $304,447.72, and within thirty days thereafter paid the dividend of $1.50 per share declared out of said sum, to the stockholders of the company. Those cognizant of the merits of this fiercely contested lawsuit are unstinted in their praise of Judge Hebbard's fair and forceful action throughout the litigation, and its remarkably good results.

Judge Hebbard presides in Department Four of the Superior Court, which has been one of the busiest departments of that court, and has most satisfactorily disposed of a great mass of important and complex judicial work.

ADDISON C. HINKSON.

A. C. Hinkson came from the State of Missouri, in 1852, when a mere boy, and located in Amador county. There, in 1865, he was elected county recorder and auditor, and at the expiration of his term was elected county clerk by a larger vote than was received by any candidate for any office in his county. At the expiration of his term as clerk he located in Sacramento and engaged in the practice of the law, and for twelve years was the partner of the late Judge J. W. Armstrong. Though he had always been a Democrat in politics, he was elected for three successive

Addison C. Hinkson

terms, superintendent of public schools of Sacramento city, against a large Republican majority. He was a director of the Sacramento Free Library for eighteen years. In 1894, when an additional Superior Judgeship was provided for Sacramento county, Governor Budd appointed him to the place. The reputation which he acquired on that bench is illustrated by an editorial of the Sacramento *Record-Union*, a leading Republican paper of Sacramento, which was published when he retired from office. It is as follows:

"With the passing of the old year there retires from the Superior Court of this county a jurist whose failure to remain upon the bench is the cause of common expressions of regret among all the people. That failure was due to a remarkable and unusual combination of circumstances which in honor bound him to accept the situation. Judge Hinkson came to the bench as the first judge of the third department. It is simple justice to say that when he was elevated to that position the breadth and judicial mind of the man and his special fitness for the place were not realized even by his nearest friends, since he had not pushed himself into notice, while modesty and unpretentious bearing had kept his real ability much in the background. But he proved, when once on the bench, to be one of the best judges. His peculiar fitness for the judicial office was at once made manifest, his breadth of mind, perfect impartiality, his inflexibility of purpose in doing what he conceived to be duty, regardless of consequences, or of persons, place or station, to individuals, enabled him to hold the scales of justice on such even balance as to elicit the admiration and praise of even those upon whom the judgments of the court descended. Aside from this, Judge Hinkson became known all over the State as the modern exemplar of judicial promptness and precision. His rules and practice in this regard became the terror of the laggard and evil doer and the admiration of the prompt. He held that the time of the court is the time of the people, and it is no more to be wasted and trifled with than is the money and property of the people. His inflexible demand that respect be paid the court and its processes, as representing the dignity and supremacy of the people, was enforced with such firmness and perfect impartiality as to awaken attention everywhere and win for him the respect of the bar and the applause of citizens. It may be said that those who suffered most under his conceptions of the majesty of the law and the dignity of the people's tribunal, are today loudest in commending his course. Judge Hinkson retires from the bench to a practice awaiting him with the proud distinction of having done an important work in elevating the character of the bench in the estimation of the people. He proved to them it is not always the man who is most pretentious at the bar who is best fitted for the judicial office. That dignity, firmness, impartiality, studious habits and thoroughness are what the people respect in their courts, and will always sustain. Learned in the law, broadminded in view, sympathetic and tender, inflexible in the discharge of duty, having such profound reverence for the principles of justice that nothing could sway him in its administration to purposely deflect it a hair's breadth from its true course, Judge Hinkson retires after a brief career on the bench with the respect, admiration and regard of all the people."

Judge Hinkson has, since his retirement from the bench been engaged in the practice of the law at Sacramento. Mr. C. A. Elliott, a most promising young lawyer, has been his partner for some years.

JAMES B. HOLLAWAY.

James Bledsoe Hollaway, a veteran of the Los Angeles bar, was born on the 2d day of February, 1829, in Sumner county, Tennessee. He was educated in the common schools. On April 15th, 1850, in company with six other young men, he left his home for a trip across the plains to California, traveling with mule teams. They arrived at Nevada City, Cal., October 4th, 1850, by what was called the Truckee route, all in good health, losing only one mule on the trip. He worked in the placer mines during the winter near Auburn, Placer county; mined on the American river during the summer of 1851. He was one of the company of thirteen that built what was known as the Jones, Truman & Co. ditch, from the North Fork of the Cosumnes river to Diamond Springs, in 1853, at a cost of $90,000, which was not a success to the builders. Our friend lost his all. He borrowed $10.00 and left Diamond Springs by stage for Sacramento, paid $8.00 stage fare, $1.00 for breakfast, on the road, arrived the same day with one silver dollar. That was in May, 1854. He hired out as pilot on the Water Lily, a sidewheel steamer then running on the Upper Sacramento river. He

got a salary of $300 per month. After working two months, he got the ague, and quit, and went north to Yreka. He mined on Humbug Creek, and was in the beginning of what is known as the "Klamath War," with the Indians in 1855-6. He held a commission as First Lieutenant of the Siskiyou Guards. Contracting rheumatism, he returned to Sacramento in May, 1856.

Mr. Hollaway was in San Francisco during the time of the Vigilance Committee of 1856, and saw Cora and Casey taken out of jail on that memorable Sunday. Going to Sonoma county, he bought a ranch on which a portion of the town of Cloverdale now stands, and went into the cattle business. He was reasonably successful. He was twice elected constable of the township. He removed to what is now Lake county in 1861. There he was elected justice of the peace in 1862, served one term. He was a member of the Court of Sessions. In 1863 he was elected County Judge, and served the term of four years. He was re-elected in 1867, and served out the second term. He removed to Los Angeles county in 1872, locating near Downey. He has since been engaged in the practice of the law in the courts of that county. He was elected by the Democratic party to represent that county in the assembly in the year 1877. After the end of the session, he returned to Downey. In 1882 he located at Los Angeles City, and opened an office in the Temple Block. In 1884 he entered into copartnership with W. T. Kendrick, known by the firm name of Hollaway & Kendrick, which continued until about 1895. Mr. Hollaway now resides at Monrovia, the "Gem of the Foot-hills," enjoying a delightful climate, and pure water among orange groves and banks of flowers. On the 2d day of February, 1901, he was seventy-two years of age, hale and hearty, and shows the results of having lived over a half-century in California.

RODNEY J. HUDSON.

Judge Hudson was born at St. Helena, California, and is now forty-eight years old. He received his literary education at the University of Michigan, at Ann Arbor. His law education was acquired at Cumberland University, Lebanon, Tennessee. He first began law practice at Los Angeles, as a partner of Anson Brunson, who was then the leading lawyer in Southern California. He remained with him two years, and was then elected district attorney of Los Angeles county. He served out his term and then, by reason of ill health, moved to Lake county, California, and followed the practice there. In January, 1880, he took his seat as Superior Judge of that county, which he retained for eleven years. Upon his retiring from the bench in January,

1891, he resumed the practice of law. In January, 1899, he removed to Hanford, California, and began the practice of law there, in connection with John F. Pryor. That association still continues.

Judge Hudson's mother and father are both California pioneers, having crossed the plains from a Southern state before the gold seekers, in 1845. His father was an officer with Fremont, under the Bear flag. The "History of Napa and Lake Counties," published in 1881, has a fuller sketch of our subject.

JOSEPH W. HUGHES.

Joseph W. Hughes was born at Fayette, Howard county, Missouri, on the 10th day of June, 1860. His parents were J. Romeo and Priscilla Ann Hughes, both of whom were natives of the State of Kentucky. His father's occupation was that of farmer. The Judge was educated at Central College, Fayette, Missouri. He came to California in February, 1882, and has since resided at Sacramento. He was admitted to practice law on the 4th day of May, 1886, in the Supreme Court of this State, and on the 12th day of December, 1892, was admitted in the Supreme Court of the United States. He was elected Judge of the Superior Court in November, 1896, and his term of office will expire on the 1st day of

January, 1903. He was married on the 18th day of April, 1893, to Nellie M. Stanley, daughter of Lee Stanley, ex-sheriff of Sacramento county.

Judge Hughes went on the bench an experienced and able lawyer, and his decisions and rulings as a Judge, as well as his manner

of trying cases, and his general conduct of his important office have met the hearty approval of the bar, and added greatly to his strength with the people. His continuance on the bench for a long period is to be taken for granted.

A. W. HUTTON.

Aurelius W. Hutton, ex-Superior Judge of Los Angeles county, was born in Greene county, Alabama, July 23, 1847. He was deprived of his parents when a little child, his father dying in 1852, and his mother in 1854, and he was reared in the family of his eldest sister, Mrs. D. H. Williams, whose husband was his guardian. He entered the University of Alabama, a military school, in 1863, becoming a member of the Alabama Corps Cadets. He was pursuing his studies there in April, 1865, when, shortly before the close of the Civil War, the institution was destroyed by the Federal forces. In the following January he began the study of law in the office of Bliss & Snedecor, in Gainsville, Alabama, Mr. Bliss was a lawyer of distinction, from New England, and had been associated with Joseph G. Baldwin, who became the great California Judge. After reading a year and a half, Mr. Hutton entered the law department of the University of Virginia, being now twenty years of age. He covered the courses of study of both the junior and senior classes in one year, and graduated in June, 1868, a few weeks before his twenty-first birthday, with the degree of B. L. He was admitted to practice by the Supreme Court of Alabama in January, 1869.

Judge Hutton's professional career has been entirely cast in California, and in Los Angeles county. He started for this State in the month of his admission to the bar, sailing from New York City on January 23, and arriving at San Francisco, by way of Panama, February 15, 1869. Settling at Los Angeles within sixty days thereafter, he there began the business of his life.

In December, 1872, he was elected city attorney of Los Angeles, and was re-elected in 1874, serving four years. In that capacity he drafted the first regular city charter of Los Angeles, and the revised charter of 1876—which were, in part, incorporated in the revised charter of 1878.

When, by act of the legislature, of February 7, 1887, two additional Judges were added to the Superior bench of Los Angeles county, Judge Hutton was recommended to Governor Washington Bartlett for one of the appointments. At the meeting of the bar, held to consider the merits of candidates, he received the endorsement, by a vote of 82 out of 104 votes cast. There were six candidates under

consideration, and Judge Hutton received the highest vote of all, being nominated on the first ballot. The Governor appointed him to the office, which he held until the next general election, a period of nearly two years. He was nominated on the Democratic ticket for re-election, and ran some 800 votes ahead of

his ticket, but the Republicans carried the county by a plurality of about 4,000. The Judge, at the end of his term, resumed the practice of law.

Judge Hutton was appointed United States attorney pro tem. for the district of Southern California by Judge Field, in 1889, and afterwards was one of the special counsel, with Alexander Campbell, in the Itata case at the time of the threatened trouble with Chile.

Judge Hutton was one of the original incorporators of the San Gabriel Orange Grove Association—Indiana Colony—which founded the city of Pasadena.

He married, in February, 1874, Miss Kate Travis, who was born in his own native state, and who came with her parents to California on the same steamer with him, just five years before. They have four daughters and two sons living.

T. E. JONES.

Theodore Eldon Jones, Judge of the Superior Court of Trinity county for the full period of twenty years that has elapsed since the court was created, was born in Herkimer county, New York, December 30, 1830. His father, Eldon Jones, a native of Wales, came to America early in life. Acquiring a competence, he invested it all in a sea-going vessel and a stock of merchandize, and sailed as supercargo from New York City for a foreign port, in 1835. He was lost, with the vessel, at sea. His widow, mother of our subject, was a native of New York state, her maiden name being Ann Kingsbury, resided in Philadelphia for about five years after her husband's death, and then removed with her son, who was her only child, to Illinois. The boy there grew up to manhood, learning the printer's trade. He came to California, overland, in 1850, with two of his uncles, arriving at Hangtown, now Placerville, on the 20th of August. He settled in Trinity county in 1853. He there followed the occupation of miner, on Trinity River, until 1861. He continued to be interested in mines for ten years longer.

The interval between our friend's life in mining camps and his long career on the bench was devoted to journalism. In 1861 he established the Trinity *Gazette* at Douglas City. Its publication ceased after one year, on account of an exodus of the people to go into the Civil War, and a rush to new mining regions at Washoe and in Idaho.

In the winter of 1867-68 he was a member of the assembly from Trinity.

In 1871 he became editor of the Shasta *Courier*. After two years he returned to Weaverville, with the intention of resuming mining, but accepted an offer to become editor of the Trinity *Journal*. His editorial service was ended by his election as County Judge, in 1875, and he served out the four years' term under the old constitution, which was superseded by the present organic law in the first week of 1880. He then became, by election in the preceding fall, the first Superior Judge of Trinity county. He has been three times re-elected, and his present term will expire on the first Monday in January, 1903. Of course, it were idle to speak of the excellent judicial qualities of such a man, so long fortified in the confidence of his people.

Judge Jones was a Bell and Everett man in the Presidential election of 1860. He joined the Union party at its organization in 1861, and upon its dissolution, in 1867, he united with the Republican party, and has always since acted with it.

The Judge has done a good deal of literary work. A press writer said of him not long ago that the productions of his pen, in newspapers and magazines, are gems of their class, and that in his stories of mining life, which have been his especial field of literary labor, the peculiar charm of his style is best displayed.

The Judge is a member of the Masonic order, of the I. O. O. F., A. O. U. W., and was one of the organizers in 1880 of the Old Settlers' Association of Trinity county, and has represented several of these orders in their grand councils. He has been thrice married, his first wife having been Sarah Jane Puterman, who died at Sacramento; his second wife was Mrs. Mary Barnes, nee Willey, who died in San Francisco. He was last married to Miss Clara L. Huggins, a native of Nova Scotia. A daughter by the first named is the wife of George I. Thompson, of Portland, Oregon.

The Judge is the best authority to consult on all matters pertaining to the history of Trinity county.

EDWARD INSKIP JONES.

Judge Jones was born in Cincinnati, Ohio, December 3, 1844. He was brought by his parents to San Francisco, where the family arrived in May, 1850.

His primary education was in the public schools of San Francisco. He was present at

Edward Inskip Jones

the organization and entered as a pupil in the first public school established in that city. His further scholastic training was in the University of the Pacific at Santa Clara.

In April, 1870, he was admitted to the bar of the Supreme Court at Sacramento. The class of applicants numbered fourteen, of whom but eight were admitted. Of these, three have since served as Judges of the Superior Court, one was appointed United States district attorney, one was elected attorney-general, and one has since become an especially distingdished member of the bar.

Judge Jones' first public office was that of city attorney of the city of Stockton, which office he held for two years. He was elected to the assembly from Stockton district in 1894. He was chairman of the committee on capital and labor, and was an active and prominent member of the judiciary committee.

In 1896 he was elected one of the Judges of the Superior Court in and for San Joaquin county, which position he now holds. His professional, as well as his official career, has always been marked by close attention, hard work and conscientious devotion to detail, joined with high character, good health and a genial disposition. J. G. S.

M. A. LUCE.

The following sketch is taken substantially from the book called "Southern California."

Judge M. A. Luce, one of the best known and most prominent men in every movement to advance the best interests of San Diego, comes of good New England stock. His father was a native of Maine, and a preacher in the Baptist church. His mother was a native of New Hampshire. By his parents he is also connected with the Masons and Hoyts of New Hampshire.

He was born near Quincy, Illinois, in 1842. He lived with his parents in Central Illinois until fourteen years of age, when he left home to prepare for college at Hillsdale, Michigan. He had entered the Sophomore class when there came an eventful April day in 1861, when the call to arms resounded through the land. And on the day after Fort Sumpter was fired upon, young Luce enlisted as a private soldier, and afterward joined the 4th Michigan Infantry. During the war he took part in all the battles of the Army of the Potomac, and these were many, including Bull Run, Malvern Hill, Second Manassas, Chancelorsville, Gettysburg, the Wilderness, Cold Harbor and Petersburg. He was wounded slightly at Spottsylvania while with the forlorn hope in the assault on Laurel Hill, and for his action on that day he received from Congress a medal of honor.

After the war Mr. Luce resumed his collegiate studies, and graduated from Hillsdale College in 1866. He then attended the Law University at Albany, and was graduated therefrom, a member of the same class with President McKinley. He entered upon the practice of law in 1868 in his native State, at the city of Bushnell, of which he was the first city attorney, and re-elected to that office on the expiration of his first term. While practicing in Bushnell he was the attorney of the First National Bank of Bushnell; local attorney of the C. B. & I. R. R. Co.; and in 1872 was a candidate for the State senate. In the winter of 1873 his health began to fail and he found it necessary to move to a climate where he could continue the practice of his profession.

That was the time when Col. Tom Scott was building his Texas Pacific across the continent, to have its terminus on the shores of San Diego bay. To the city of San Diego Mr. Luce moved in May, 1873, and immediately opened a law office and engaged in the practice of his profession.

In the fall of 1875 he was elected Judge of the County Court of San Diego county, and held that office until the new constitution went into effect and terminated the jurisdiction of that court in January, 1880.

In the fall of 1880 the California Southern Railroad Company was organized, and he was elected its vice-president and appointed attorney of the company for California. In 1887 he was attorney for the railroad company, the Pacific Coast Steamship Company, and other large corporations; but owing to continued overwork, he withdrew entirely from the practice of the law for two years and devoted himself entirely to recuperation of his health.

He resumed the practice of the law in 1890 in the firm of Luce, McDonald & Torrance, has continued in the practice ever since, being now of the firm of Luce & Sloane.

Judge Luce has been interested in the advancement and upbuilding of the city of his adoption. He has also been concerned in the mining developments of the county and is a principal shareholder in the Shenandoah mine at Mesa Grande.

In 1889 he was appointed by President McKinley postmaster at the city of San Diego.

Judge Luce is six feet in height, of slight figure, and his face has more the look of a

student than of one immersed in business. He has strong taste for literature and possesses a well-appointed library.

J. H. LOGAN.

James Harvey Logan, the first Superior Judge of Santa Cruz county, was born near Rockville, Indiana, December 8th, 1841. He lived on his father's farm, attending the district schools, until the fall of 1856. He then entered the Waveland Collegiate Institute at Waveland, Ind., and completed a four-year classical course in June, 1860, when he moved to Kansas City, Mo. He taught school at Independence, Mo., during the summer and fall of 1860, and the winter of 1861. The secession movement in Missouri paralyzed all business in that locality and threw him out of employment. He started for Omaha early in April, 1861, and went into the service of the Overland Telegraph Company, then building a telegraph line across the deserts to California. He arrived at Salt Lake in the fall of 1861, and from there he came to California by overland stage, arriving at San Jose, December 12th, 1861. Shortly after, he entered the law office of Hon. C. T. Ryland, and was admitted to the bar in 1865. In 1867 he moved to Santa Cruz and began the practice of law. He was deputy district attorney under Julius Lee, and had sole charge of the office from January 1st, 1868, to January 1st, 1872. He was elected district attorney in 1871, 1875, and 1877, and in 1879 was elected the first Superior Judge of Santa Cruz county.

Judge Logan's first term on the bench ended in January, 1885. He was president of the Bank of Santa Cruz County from September 1887, to October, 1893, when he was appointed by Governor Markham Superior Judge, to fill the vacancy caused by the death of Hon. F. J. McCann, in September, 1893. He was elected Superior Judge for the unexpired term in 1894. His last term of office expired January 1st, 1897.

He was a wise and faithful judge. He is now practicing law at Santa Cruz. He has a family, an elegant home, and is in good circumstances. He is of a tall figure, fine presence, genial temperament and companionable, and loves to tell or to hear a good story. He is very popular and deservedly so. There is no other man in the county whose taking off would be so generally lamented. He enjoys superb health.

W. G. LORIGAN.

The parents of this respected Santa Clara county jurist were both natives of Ireland, and came to the United States in their youth, settling in Ohio. From *Sunshine, Fruit and Flowers*, published in San Jose, in 1895, we learn that the parents of Mr. Lorigan removed in 1852 from Cincinnati to the gold fields of Australia, and it was while they were temporarily residing there, in 1855, that our subject was born. Five years later his parents returned to America, settling in Santa Clara county, California, and there the son passed his youth and early manhood until he took up his residence in San Jose, in the same county in 1884, except for a period while attending school in the East. His education was obtained at Santa Clara College, California, and at St. Vincent's College, at Cape Girardeau, Missouri. He studied law with the firm of Moore, Laine, Delmas and Lieb, at San Jose, and after a thorough course of preparation, he was admitted to practice by the Supreme Court in 1879. He immediately engaged in active practice, and it was not long until he was recognized as one of the best lawyers in the city. In 1890 he was elected to the position of Superior Judge of Santa Clara county, an office which he has filled with grace, dignity and learning. As a judge he has been impartial in his rulings, justly exacting regarding the conduct of lawyers in his court, yet treating all with a gentleness and courtesy which have

W. G. Lorigan

won for him the universal respect of the bar. The Supreme Court has almost universally sustained the views of Judge Lorigan in matters of law which have been appealed from his department.

Thus far, we have somewhat closely followed the language used in the publication named.

The Judge was re-elected in 1896, and his present term will expire in January, 1903. He has charge of all the criminal business, and also tries one-third of the civil cases. There are three Judges of the Superior Court of his county. Our information and observation show that the judgment of the Santa Clara county bar accords with the expressed views of the San Jose *Herald*, in 1895, to-wit: that, "since his accession to the bench Judge Lorigan has won for himself an enviable reputation as an able, clear-headed, honest-minded jurist. He has handled many important cases in a manner that has demonstrated a rare judicial ability. In personal appearance Judge Lorigan is portly and dignified, with a smooth, open face, the prominent characteristics of which are intelligence, firmness and benevolence."

The Judge is an influential member of the Young Men's Institute, of the American Foresters, and of the Elks.

JAMES W. McKINLEY.

James W. McKinley, who was a judge of the Superior Court of Los Angeles county for eight years (nearly), ending in January, 1897, was born in Newcastle, Pennsylvania, April 24, 1857. He was graduated from the literary department of the University of Michigan in 1879. He prepared for the bar in Newcastle, Pa., and was admitted to the bar of the Supreme Court of Pennsylvania in 1881. After practicing in his native town for two years, he came to California and located at once at Los Angeles. This was in April, 1883. He immediately entered on the practice in partnership with W. T. Williams, under the firm name of Williams and McKinley.

In December, 1884, Mr. McKinley was elected city attorney of Los Angeles, and served the term of two years ending January 1st, 1887. He declined a renomination.

At the legislative session of January-March, 1889, an act was passed increasing the number of Superior Judges of Los Angeles county from four to six. The local bar of Los Angeles city held a meeting to consider the merits of candidates for the new positions. Mr. McKinley, by a vote of that meeting, receiving 97 out of 110 votes cast, was recommended to the Governor for one of the appointments. Governor Waterman accordingly commissioned him as Superior Judge on March 11, 1889. He qualified on March 16th, took his seat a week later, and served the short term ending in January, 1891. He continued on the bench, having been elected his own successor, on the Republican ticket, at the general election in November, 1890. He then served a full term of six years, which ended on the first Monday in January, 1897. On leaving the bench he resumed law practice at Los Angeles, in partnership with M. L. Graff. This association lasted for about two years, and since its termination Judge McKinley has continued practice alone.

In 1894 the Judge, being then on the Superior Court bench, received the endorsement of the Republican county convention of Los Angeles for the office of Supreme Judge, but was defeated for the nomination.

In the fall of 1886, Judge McKinley made a visit to the East, and in October, married a former school companion, Miss Lillian Elder, who was born in his own native town of Newcastle. They have one child, a boy of nine years.

FRANK MOODY.

Judge Moody was born in the state of Missouri, in the year 1867. His parents were of Southern blood—his father from Virginia and his mother from Kentucky. His father came to California when our subject was fifteen years old, and purchased a small farm near Los Angeles, he having been a merchant in Missouri. The son was graduated from the public schools and completed his education in Los Angeles. However, before completing his studies in that city he worked and studied much without the aid of any instructor, mostly at night. He commenced the study of the law in 1889, in the law office of James G. Scarborough of Los Angeles. A year later he was admitted to the bar, after examination before the Supreme Court, at Los Angeles. He stood a good examination.

While pursuing his study of the law Mr. Moody removed to Santa Ana, Orange county, California, with Mr. Scarborough (in whose office he remained as assistant, after having been admitted to practice). He served one term as assistant district attorney of Orange county under Mr. Scarborough. In January, 1894, he located in Willows, Glenn county, California. In November of the same year

he was elected Superior Judge of the county, at the age of twenty-seven years, and served four years, since which time he has been practicing law in the same place. Probably he was the youngest Judge in the State. Judge Moody's record while on the bench was most excellent. He gained the confidence of the business men and others while in office, and

has a very good practice now, among his clients being many of the wealthiest corporations, and citizens, of the county.

Judge Moody is prominent in Masonic and church circles.

JAMES G. MAGUIRE.

Ex-Judge Maguire has been a striking figure in the history of the State and its metropolis ever since his admission to the bar—indeed, his public record runs back of that important incident of his life. He has been practically a public man during his whole career—always, whether in or out of office, being an earnest student of measures affecting the people, and being often in the popular eye on the stump and the lecture platform. Active in the legislature and in congress, busy at the bar, industrious on the bench, he has yet, more truly than in these important provinces, kept in touch with the masses by his talks from the platform and in the press. His large and strong build, physically, and his careful life, are prime auxiliaries in the prosecution of his varied work, which he is constantly accomplishing without impairment of a single faculty.

James G. Maguire was born in Boston, Massachusetts, on the 22d of February, 1853. In April of the next year his parents, bringing him with them, removed to California, and settled at Watsonville, Santa Cruz county. There the son grew up, attending the public schools and the private academy of Joseph K. Fallon. Upon leaving school, he served an apprenticeship at the trade of blacksmithing for four years. He afterwards taught school for a year and a half. Removing to San Francisco, which has ever since been his residence, he was elected to the legislature (assembly) in 1875, at the age of twenty-two, serving at the Twenty-first session, December, 1875, April, 1876. In January, 1878, he was admitted to the bar by the Supreme Court of this State. In 1882, when he was in good practice, he was elected one of the Judges of the Superior Court of San Francisco, for a full term of six years, which he served. Then voluntarily leaving the bench, he practiced law for about four years, and was in November, 1892, elected as a Democrat to the national house of representatives from the Fourth congressional district. He was re-elected in 1894, and again in 1896, his period of service commencing March 4, 1893, and ending March 3, 1899.

The Congressman turned from this high field of activity—just as the Judge had stepped down from the bench—of his own free will. He was representing a Democratic district, and possessed great strength outside of his party, and there was no question as to his renomination and re-election to congress. However, his party believed him to be their strongest man to place before the people for Governor in the fall of 1898, and he accepted the nomination for that office instead of that for congress. He made a notable and untiring canvass of the State, but the Republicans elected their State ticket. It was their "turn." There had been since the Civil War opened five Republican and five Democratic Governors, and the Governor then going out of office was a Democrat (Hon. James H. Budd).

Judge Maguire, since he left congress, has been in active law practice at San Francisco in partnership with Mr. James L. Gallagher (Maguire & Gallagher).

He was united in marriage at Monterey on the 6th day of March, 1881, to Miss Louisa J. Joyce, daughter of Willis W. Joyce, and has two sons living.

In the domain of political economy, Judge Maguire has been very assiduous. He is distinguished for his untiring advocacy of the proposed reform known as the "Single Tax" —perhaps standing above all other men in the

James G. Maguire

discussion of this question, now that Henry George is no more. It is now twenty years since he wrote a long series of articles for the press, under the name "Francis Volney," on the land question. As President of the "Tax Reform League" he sent a memorial to the legislature on February 16, 1885, praying that only land values be taxed. In a lecture on November 3, 1885, he traced the main cause of want in the United States to land monopoly. The evil of Chinese immigration, then popularly regarded as the efficient cause of hard times in California, he said was not to be compared with this. He wrote a press article of December 12, 1885, in which he declared that "Agrarian laws were founded on natural justice, and their spirit must be revived." In the fall of 1887, while holding the office of Superior Judge, he went to the eastern states and spent two months in the interest of Henry George's party.

Judge Maguire is a free-thinker on religious subjects. On August 29, 1885, in deciding the great "Seal Rock Tobacco case" of Jones vs. Brandenstein, in favor of the plaintiff, he took occasion to rebuke the plaintiff's counsel for their abuse of the Jews. His remarks on this subject are to be found in the Francisco *Call* of August 30, 1885. He took an active and prominent part in the great controversy between Dr. Edward McGlynn and the Catholic hierarchy, on the side of McGlynn, in the course of which he wrote and published a powerful arraignment of ecclesiastical politics, entitled "Ireland and the Pope," and numerous letters and addresses, which had wide circulation. He is also quite independent politically. In President Cleveland's first administration, believing that the Democratic party leaders were inspired by aristocratic sentiments, instead of being imbued with popular feeling, he denounced the administration and formally withdrew from the party; returning, however, when Cleveland declared in favor of practical free trade, in which he is a firm believer. His letter of withdrawal from the party, giving his reasons therefor, addressed to the Democratic State Club, may be found in the *Evening Bulletin* of January 28, 1887, and in the great metropolitan dailies of the 29th.

A vigorous letter of his on the "Water Question"—a question which nearly every year excites the freeholders of San Francisco, is in the *Weekly Star* of July 24, 1886.

While on the bench, Judge Maguire heard and decided many notable cases, among which was the famous land case of Joseph Emeric against Juan B. Alvarado (the last Governor of Alta California under Mexican rule), and some two hundred other defendants. This is said to have been the most complicated and difficult of all the Spanish grant cases of which the treaty of Guadalupe Hidalgo was so prolific, and the Supreme Court of California (90 Cal. 451), in affirming his decision, expressly complimented Judge Maguire upon his masterly and systematic method of conducting and determining the case.

In congress he was the acknowledged leader of the opposition to refunding the Pacific Railroad debts to the United States government, and, as the direct result of that successful opposition, the government collected the debts in full, amounting to about $200,000,000, which would otherwise have been frittered away and lost. He also led and won the fight for sailors' rights, which were greatly promoted by the passage of the so-called "Maguire bills."

Since leaving the bench he has conducted, and is now conducting, some of the most important cases that have arisen in California during that period—notably the Santa Cruz bond case, now pending in the United States Supreme Court, and the recent cases of Von Schroeder vs. Spreckels, and Wallace vs. Melone, which, on account of the large interests involved, the prominence of the parties litigant, and the interesting character of the issues, have aroused widespread public interest.

The Judge, now nearly forty-eight years of age, enjoying a good and lucrative law practice, does not permit mere money-making considerations to absorb his whole time and energy, but still manifests the public spirit which made him both prominent and popular in earlier years, and gives promise of long continued service in the investigation and discussion of questions of material interest to the people.

STEPHEN G. NYE.

Stephen G. Nye, of Oakland, was born in Westfield, Chautauqua county, N. Y., January 30th, 1834, a son of John and Harriet (Smith) Nye. The mother was a native of Dutchess county, New York; the father of Worcester county, Mass. In their youth they removed to the Holland Land Company's Purchase in Chautauqua county, New York, when that country was an unbroken wilder-

ness; it was there they first met and were married.

They lived there for thirty-eight years together and had the usual privations and successes of pioneer life. The mother died at Westfield, N. Y., in 1870. The father removed to San Leandro, Cal., where he died in 1875. The children of John and Harriet Nye were two sons, Stephen G., and George. The latter enlisted in the Union army in October, 1861, in the 9th New York Cavalry, and died of pneumonia at Alexandria, Va., in June, 1862.

On both the father's and mother's side Judge Nye is descended from Revolutionary stock. The earliest ancestor of the Nye family was Benjamin Nye, who was at Sandwich, Mass., as early as 1637, and all the American Nyes are supposed to be his descendants.

The Judge's great grandfather, Major Benjamin Nye, with six brothers, took part in the battle of Bunker Hill. The solid part of his education Stephen G. Nye obtained at what he is pleased to call the American University—the little brown school house of pioneer times.

Later on he prepared for college principally at Alfred Seminary, Allegheny County, N. Y., and afterwards entered Allegheny College at Meadville, Pa., at which he was graduated in 1858. For eighteen months after, he was principal of the Westfield Academy, and then entered as a student in the law office of Hon. T. P. Grosvenor, at Dunkirk, N. Y. In November, 1861, he came to California, and earned his first money as a teacher in the public school at Centerville, Alameda county. In the spring of 1862 he became law clerk in the office of Janes & Lake, of San Francisco, and was admitted to practice by the Supreme Court in April of that year, and in 1863 settled in Alameda county, where he has ever since resided, save that from October, 1888, to February, 1890, he lived on a ranch in Tulare county.

In 1863 he was elected district attorney of Alameda county, and served two years.

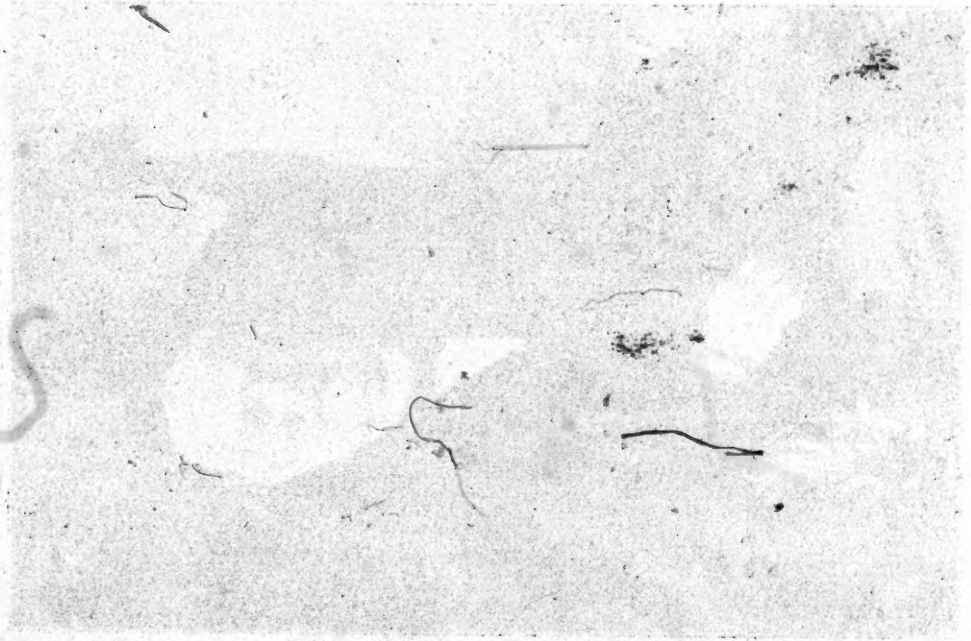
In August, 1867, he was appointed County Judge by Governor Low, to fill the vacancy caused by the resignation of Hon. Noble Hamilton. By successive elections he held the office until September, 1878, when he resigned to resume law practice. On the adoption of the new constitution in 1879 he was elected State Senator, and served as chairman of the judiciary committee. For eleven years he had for his law partner, J. B. Richardson. He is still in the practice of his profession, being the senior member of the law firm of Nye & Kinsell.

In length of service in the practice of his profession in the courts of Alameda county, he now outranks all the other resident members of the bar.

Stephen G. Nye was married in San Francisco January 26, 1863, to Emma M. Hall, of Westfield, N. Y., a daughter of Deacon Asa and Pauline (Mack) Hall, who were pioneers of Chautauqua County. She, too, comes of Revolutionary sires on both the father's and mother's side—one ancestor, Samuel Foster, with twelve sons, having served as soldiers in the patriot army. Judge and Mrs. Nye have two children, Mrs. Myrtle, wife of Thomas H. Davis of Tulare County, Cal., and Harriet L. Nye of Oakland.

MILTON H. MYRICK.

Milton H. Myrick, a Justice of the State Supreme Court for the term of seven years, ending in January, 1887, was born May 28, 1826, on a farm near Paris Hill, in Oneida county, New York. His father was Rev. Luther Myrick, who was of New England extraction, his ancestor, Ensign William Myrick, having settled at Eastham, Massachusetts, on Cape Cod, in 1646, and served six years under Miles Standish. Rev. Luther Myrick, as minister, was located at different times in places in Central New York: Manlius, Oswego, Cazenovia; he was a member of the convention which met at Utica in 1835 to form the first New York State Anti-Slavery Society. He was a friend and associate of Rev. Charles G. Finney, later of Oberlin, and Ger-



M. H. Myrick

rit Smith, of Peterboro. He edited and published a weekly paper in Oswego, where the boy learned to set type, and later removed to Cazenovia, where young Myrick continued to work in the printing office, and attended school at the Cazenovia Seminary. Hon. S. H. Dwinelle, afterwards judge in San Francisco, was a boy there, as were W. W. Montague, Esq., now postmaster of San Francisco, the late Rev. A. W. Loomis, Charles Dudley Warner, and Hon. J. R. Hawley, the latter now United States senator from Conecticut. In May, 1843, the family moved and located upon a new farm in Jackson county, Michigan, where the father died in September following. The boy then returned to printing, and worked at different offices, during the years 1845, 1846, and 1847, in Jackson, Syracuse, Albany, New York City, and in the government office in Washington. In Albany he worked on the Albany *Argus*, Edwin Crosswell, editor and proprietor; Edward Gilbert was foreman of the office; Mr. Gilbert afterwards came to California with the Stevenson Regiment, and became noted here, not only in his life but in his death in a duel. In February, 1848, being in Washington, Mr. Myrick saw John Quincy Adams as he lay dying on a cot in the speaker's room. He then returned to Michigan, and read law in the office of Frink & Blair—the latter afterwards the "war governor" of Michigan. While reading law, Mr. Myrick was deputy county clerk of Jackson county, and deputy clerk of the Supreme Court when sitting at Jackson. As such deputy he knew Hon. Alpheus Felch, Hon. G. V. N. Lothrop, Hon. George Miles, Hon. T. M. Cooley and Judge Campbell.

In July, 1850, he was admitted to practice by the Supreme Court; Hon. C. W. Whipple, Chief Justice, and Justices Warner Wing, Edward Mundy and two others. In the summer of 1851 he acted as amanuensis for Hon. Wm. H. Seward in the trial of a case in Detroit, taking testimony in court, and in the evening writing for Governor Seward.

In 1854 he came to California by the Nicaragua route, the good ship Sierra Nevada, Captain Blethen, landing at the foot of "long wharf," San Francisco, in October; upon landing he had five dollars, and as that was a small capital upon which to commence practicing law, and as the State was pretty full of lawyers, he fell back upon his trade, and followed printing for a year, being at work on the San Francisco *Sun*, G. K. Fitch editor and part proprietor; in October, 1855, he went to Shasta and assisted in establishing the Shasta Republican, Hon. J. C. Hinckley editor. In May, 1857, he removed to Red Bluff and resumed practice of law in partnership with Warner Earl, who was later County Judge there, and afterwards Justice of the Supreme Court of Nevada. In May, 1866, he removed to San Francisco and practiced law. He was appointed by Judge O. C. Pratt, then Judge of the Twelth Judicial District Court, referee in the Buri-Buri partition case, and as such took proofs and examined the muniments of title—several hundred—and reported upon the titles, which report was adopted and became declaration of the titles of that great tract of land, extending from San Francisco to San Mateo. In this case he was brought in contact with many of the then leaders of the bar of San Francisco, and perhaps owed to the conduct of that case the good will of the lawyers and his subsequent judicial career. He used to say that "he needed San Francisco more than San Francisco needed him." For about a year and a half, in 1869, 1870, and 1871, he was a member of the firm of Sawyer and Myrick (Hon. E. D. Sawyer, ex-Judge of the Fourth Judicial District).

In 1871 he was nominated by the "Tax Payers' Convention" for the office of Probate Judge of the City and County of San Francisco, and was elected to succeed Judge Selden S. Wright. He served the four years' term, January 1, 1872, to December 31, 1875. In 1875 he was nominated for the same office in the Republican party, and re-elected, and served the four years from January 1, 1876, to December 31, 1879; at which time, under the new constitution, the Probate Court as a distinctive tribunal was superseded by the Superior Court.

In 1879 he was nominated by the Republican State Convention and was elected Associate-Justice of the Supreme Court, and drew the term of seven years, from January 1, 1880, to January 1, 1887, which term he served, his associates being Chief Justice Morrison and Justices McKinstry, Thornton, McKee, Ross and Sharpstein; making fifteen years of continuous judicial service—eight years as Probate Judge and seven years as Justice of the Supreme Court. He then resumed the practice of law. In February, 1887, he became a member of the firm of Myrick & Deering (Mr. F. P. Deering), which relationship still exists.

Judge Myrick became a member of the Masonic Order in Michigan, in 1849, and since

then has been an ardent member of it. He was High Priest of Shasta Chapter, No. 9; four years W. M. of Vesper, No. 84, Red Bluff; one year W. M. of Oriental, No. 144, and one year H. P. of San Francisco Chapter, No. 1, San Francisco; and later, one year G. H. P. of the Grand Chapter of California. He thinks that no one in this State has greater cause than he for gratitude for the friendships of the order.

The Judge is also an orchardist. In 1881 he bought eighty acres of land in the Santa Clara Valley, which he has planted to fruit trees; he has now nearly six thousand fruit trees, most of them in bearing. For eighteen years the place has been his vacation resort.

Looking back over the long period of fifty years and more, from now to the time of the admission of the State in 1850, and at the character of the men he has met in the profession on the bench and at the bar, in Michigan and in California, he is impressed with the suggestion that, of all men in the world, the Judge on the bench can best afford to try to be a gentleman. The exercise of power, for the public good, in a courteous, dignified manner, is the act of a gentleman; the exercise of power arbitrarily is not.

For thirty-five years we have known this exemplary character. It is a pleasure to write of a man of so industrious, useful and blameless a life, and to record that he is yet in the fullness of an honorable activity at the bar. "Act well your part—*there* all the honor lies."

FRANK B. OGDEN.

Frank Burroughs Ogden was born in Newark, N. J., April 26, 1858. His father, Jonathan Townley Ogden, was himself a lineal descendant of John Ogden, the original settler of New Jersey, and whose descendants figured in the War of the Revolution, the War of 1812, and that of the Rebellion. His mother was Rosalie Burroughs Ogden, whose father, Colonel Joseph Burroughs, was one of the best-known men of Newark, and at the time of his death in 1884 was the oldest Mason in New Jersey. Her maternal grandfather, Searles, was the inventor of the fur-blowing machine, the mother of all our rotary knife machines.

Judge Ogden came to California when scarcely twelve years of age, and has since resided in Oakland. He was admitted to the local bar in 1881, and to the Supreme Court bar in August, 1886. In 1882 he was elected City Justice of Oakland. He was thrice re-elected to the same position, frequently endorsed by other parties who refused to nominate against him. In February, 1893, while serving his fourth term as City Justice and ex-officio Police Judge, he was appointed by Governor Markham Judge of the Superior Court, and was elected to that position for a full term two years later. In September, 1900, the Republicans of Alameda county again nominated him for the same position, and he was voted for and chosen for another full term at the election of November 6, 1900.

Every convention since the first term of office has conferred the nomination upon him by acclamation. This is high praise for any man. He has served continuously on the bench for nearly fourteen years.

FRANK F. OSTER.

Frank F. Oster was born at Sparta, Wisconsin, June 3, 1860. He was graduated from Sparta High School in 1878, and from the

University of Wisconsin in 1882. He read law in the office of Morrow & Masters, at Sparta, and was admitted to the bar of the Supreme Court of Wisconsin in 1885. He was elected municipal Judge of his native city, while he was pursuing his law studies in the spring of 1885. In November of that year, after his admission to the bar, he resigned the municipal judgeship and came to California.

Judge Oster spent the winter of 1885-86 in traveling in California. In the spring of 1886 he went to Colton, then a booming young town, to visit friends, and was persuaded to remain there. In that fall he helped to or-

Oval Pinkey

ganize and establish the First National Bank of Colton, but soon found the demands of his growing law practice so great that he was compelled, in May, 1887, to sever his connection with the bank. Upon the organization of Colton as a municipal corporation, in July, 1887, Judge Oster became its first city attorney, and held the position for four years, declining to serve longer.

On January 1, 1891, he moved his law office from Colton to San Bernardino, the county seat of San Bernardino county, and formed a partnership with Hon. W. J. Curtis, one of the oldest and best-known lawyers of that county. He continued, however, to reside at Colton until January 1, 1893, when, having been elected district attorney of San Bernardino county, he removed his residence also to the county seat, where he still resides. He served as district attorney for one term of two years and declined re-election.

Judge Oster, in November, 1896, was elected Superior Judge of San Bernardino county, and went into office the following January.

In politics he is a Republican. He was married on October 15, 1891, to Miss Elsie M. Donald, daughter of Rev. William Donald, then pastor of the Presbyterian Church at Colton. He has one child, a boy, Donald T. Oster, born September 30, 1894.

The Judge is a charter member of Colton Lodge No. 137, Knights of Pythias, and a member of St. Bernard Commandery No. 23, Knight Templars, of San Bernardino, and Al Malaikah Temple, Nobles of the Mystic Shrine.

GEORGE E. OTIS.

George Edmund Otis, who was Superior Judge of San Bernardino county for the full term ending in January, 1897, was born in Boston, Mass., November 5th, 1846. He was educated at the Boston Latin School, and Norwich University, Vermont. At the age of seventeen he left the university to go into the Civil War, enlisting in the Sixth Massachusetts Volunteers, Company H. At the end of his term of enlistment, he was honorably discharged. Returning to his native city, he pursued the study of law in the office of Richard H. Dana, Jr., author of the celebrated book, "Two Years Before the Mast." Two years was also the period of our subject's study in Mr. Dana's office. He continued his preparation for the bar in Harvard Law School, from which institution he was graduated in 1869, with the degree of LL. B.

Judge Otis began the practice of law in Boston. After a few years at that bar, he removed to California, arriving here in 1875, and locating at San Bernardino. He followed the profession at that place for two years, in partnership with Hon. W. J. Curtis, who was district attorney at that time, the firm name being Curtis & Otis. Then changing his residence to San Francisco, he practiced there in partnership with Charles E. Wilson, under the style of Wilson & Otis. This was in 1880, and after four years, John J. Roche entered the firm, which continued some three years longer as Wilson, Otis & Roche. It was then dissolved, Judge Otis having returned to San Bernardino.

At San Bernardino, Judge Otis again joined his old associate, Mr. Curtis, and this partnership lasted until the Judge's entry upon the office of Superior Judge in January, 1891. At the end of his six years' service on the bench, Judge Otis resumed law practice in partnership with Hon. F. W. Gregg. This association still exists, under the firm name of Otis & Gregg. Judge Otis resides in Redlands, a short distance from San Bernardino, having his office in the latter place.

OVAL PIRKEY.

Oval Pirkey was born in Alexandria, Tennessee, February 22, 1861. His maternal great grandfather was Chancellor Williams of that state, who is mentioned as a respectable legal authority in Kent's Commentaries, while his grandfather on the same side was a Circuit Judge and congressman in ante-bellum days, when learning, integrity and honor were prerequisites to those positions in Tennessee. The greater part of Judge Pirkey's boyhood was passed at Canton, Missouri, where he attended Christian University, in which institution his father was a professor for twenty years, and then president.

In 1885 he was admitted to the bar and began the practice of law in Washington Territory. In 1898 he was elected Judge of the Superior Court on the Republican ticket in Glenn county, California, a county with a Democratic majority of over three hundred. He presided during the famous Murdock note case, at Willows, in April and May, 1899, which was considered one of the most important jury cases ever tried in the West. He was an able man at the bar, and on the bench he shows a deep knowledge of the law, and is prompt, cautious and firm.

JOHN REYNOLDS.

John Reynolds, ex-Superior Judge of Santa Clara county, was born in Bedford, Westchester county, New York, on February 20, 1825, and received his education at the Union Academy of that town, conducted by his brother, Alexander G. Reynolds. Hon. W. H. Robinson, afterwards county judge of that county, and later a member of congress and collector of the port of New York, received his education with him at the same school, each going from it at about the same time to study his chosen profession. He studied law at Sing Sing, New York, in the office of his brother, S. F. Reynolds, afterwards judge of the Fourth District Court of San Francisco. He was admitted to the bar by the Supreme Court of the state of New York, and commenced to practice law in his brother's office,

and there continued for one year. Coming to California in the fall of 1853, he was admitted to practice by the Supreme Court of California in that year, opening an office in San Francisco, where he continued until the fall of 1871. He then located permanently at San Jose, and has ever since engaged in the practice there, except when on the bench. He was a member of the first Republican State convention in 1856, chairman of the Republican county committee in San Francisco during the presidential election of 1864, in which campaign he devoted his time exclusively, for seven weeks preceding the second election of Lincoln, to his duties as chairman of that committee; and has always been interested in political matters, although never an active politician.

He was married in 1855 to Miss Emily Marshall of Sing Sing, New York. After forty-four years of happiness and devotion this companionship was terminated by the death of his wife in 1899.

He was elected a member of the assembly in 1880, and was a member of that body during the memorable session of the legislature in 1881. On account of certain combinations with which he did not sympathize, and which resulted in the defeat of the apportionment bill, he was not placed at the head of the judiciary committee; but it is well known that no constitutional question arose in the committee, or the house, in which he was not consulted, and in but one instance was his opinion disregarded, and in that case his vote is found recorded in accordance with a subsequent decision of the United States Circuit Court.

Judge Reynolds' practice as an attorney has been in some of the most important suits instituted in this State. Actions involving titles to lands have been his specialty, and in these his careful method and thorough research have been often commented upon. The most complicated suit, as some claim, ever had on the coast, was begun and managed by him to the end, with no error in the slightest detail. This was the partition of Las Animas Rancho, covering the city of Gilroy, and many thousand acres of outside lands, and in which there were several hotly contested controversies, involving about one-eighth of the whole rancho, and which occupied the court weeks in trying. There were about two thousand parties to the record in this action, which was pending several years. The careful, methodical, painstaking character of Judge Reynolds, together with his knowledge of the law, acquired by nearly forty years of study and practice, eminently fitted him to receive the appointment to the bench, at the death of Hon. David Belden, in 1878, at which time Governor Irwin appointed him to the Superior Judgeship of Santa Clara county. At the expiration of the term for which he was appointed the people of the county manifested their appreciation of the Governor's choice by electing Judge Reynolds to succeed himself, and he continued to occupy the position until 1896.

It would be unjust to Judge Reynolds to close this article without saying that he is a man of unspotted character, a gentleman honored and esteemed by all, and a sturdy specimen of the ideal lawyer and citizen.

A. L. RHODES.

Augustus Loring Rhodes, the venerable Judge of the Superior Court of Santa Clara county, once Chief Justice of the Supreme Court, was born in Oneida county, New York, in 1821. He was admitted to the bar in Indiana in 1846, married in the same year, and came to California in 1854. After a few years devoted to farming, he began law practice at San Jose, in 1856, in partnership with P. O. Minor. In 1857 he ran for county judge, but was defeated by the Democratic candidate. In 1859 he was elected district attorney, as a Republican, his opponent being Charles B. Younger. In 1860 he was elected State senator for Santa Clara and Alameda counties. At the thirteenth session, 1862, he was chairman of the senate judiciary committee. He was elected a justice of the Supreme Court in October, 1863, the first election after the number of justices had been increased from three to five. He drew a term of eight years, which he served. In October, 1871, he was elected for a full term of ten years, and served until the first week in 1880, when the new constitution took effect. On September 3, 1879, he was defeated by a small majority for Chief Justice by Robert F. Morrison, Democrat. He was Chief Justice of the court from January, 1870, till January 1, 1872. On the bench, as in the senate, he evinced extraordinary industry and devotion to his trusts. He wrote the opinion in Lick vs. Austin, 43 Cal. 590; dissented in the Chinese testimony case of the People vs. Brady, 40 Cal. 207; dissented in the local option case of ex-parte Wall, 48 Cal. 323, and in People vs. Cage (twice in jeopardy), 48 Cal. 331. He wrote the opinion knocking on the head the proposed Mont Eagle University. (See Hawes vs. Stebbins, 49 Cal. 372.) On July 23, 1886, he joined with the San Francisco Bar Association against the movement to reorganize the Supreme Court.

Judge Rhodes, on leaving the Supreme bench, formed a law partnership with Alfred Barstow of San Francisco, and practiced at that bar with the same partner for the long period of twenty years. During all this time he kept his residence at San Jose. He became Judge of the Superior Court of Santa Clara county, by appointment of Governor Gage, on September 22, 1899, in the place of Hon. A. S. Kittredge, deceased. In November, 1900, he was elected for a full term, without opposition; indeed, he was nominated by the Republican, Democratic and Good Government parties. Judge Rhodes is a man of five feet, ten and one-half inches in height, and weighs 165 pounds. His complexion is light; his hair was dark brown, now gray. He is active and alert in mind and body, systematic and studious, and furnishes a splendid illustration of a green old age. The golden wedding of himself and wife was celebrated in September, 1896. He has occupied his present residence since 1858.

H. C. ROLFE.

H. C. Rolfe was born in Maine in 1834, but when he was only a few weeks old his parents with their family moved into the then far West in the Mississippi valley. He came to California when quite young. From 1850 to 1857 he spent his time in various parts of the State, took part in several campaigns against hostile Indians in Southern California, and worked several years at mining in Nevada county, gaining nothing but experience. In the fall of 1857 he commenced the study of law with William Pickett, who was then recently established in San Bernardino with a good law library, and who kindly gave young Rolfe the use of it for study, in return for what little assistance he could render.

With but a common school education, he devoted his time to hard study. He was admitted to the bar, and in 1861, was elected district attorney of the county for a term of two years, and was re-elected in 1863 for another term. At that time San Bernardino was on the remote frontier of what was called the "cow counties," a name used to designate the sparsely populated southern part of the State, of which the greatest part of the wealth, aside from the large ranchos, consisted of great herds of cattle roaming at large over the plains. There had at that time drifted into the county many reckless and lawless people with little regard for the rights of property or the good order of society. That was during the War of the Rebellion, and many of them at least pretended to be in open sympathy with the Confederacy; and whether sincere or not in such pretense, it gave them an excuse for many of their lawless adventures and depredations. From San Bernardino it was too handy for them to skip off to Dixie, or go and hide in the wilds of Arizona or the Colorado desert. Many of them did not take that much pains to evade the law, but remained and boldly set at defiance all law and authority. Under such circumstances it is evident that the office of public prosecutor required

some nerve and good judgment for a proper discharge of its duties. The many criminal convictions for state prison offenses in the county at that time show that the office was administered with rare courage and intelligence.

On retiring from this arduous position Mr. Rolfe continued the practice of law until the creation of the eighteenth judicial district, composed of the counties of San Bernardino and San Diego, in February, 1872, when he was appointed judge of that district, by the Governor, to hold the office until the next ensuing election. Although he was a candidate to succeed himself for the full term, he was not elected, and resumed practice at San Bernardino. In 1878, at the special election for members of the State constitutional convention, he was elected joint delegate from the same two counties, and took an active part in the proceedings of that body. The work of the convention being ratified by the people, by the adoption of the constitution which it had prepared, his home constituency showed their appreciation of his services at the general election of 1879, by electing him judge of the Superior Court, which court had been created by the new constitution to take the place of the former District and County Courts. At the expiration of his term he voluntarily retired from the bench to again resume practice at the bar.

Judge Rolfe is married and has two married daughters and several grandchildren, and is still engaged in law practice at San Bernardino.

RICHARD C. RUST.

Richard C. Rust, Superior Judge of Amador county, was born in Marysville, California, October 19, 1855. He was married November 30, 1887, to Miss L. G. Hosmer, a daughter of H. B. and M. V. (Taggart) Hosmer. There are two children of the union, Richard Whiting, who was born December 3, 1889, and Helen, born December 28, 1896. In politics, Judge Rust is a Democrat. He received his early education in the public schools of Calaveras county.

In March, 1876, he commenced the study of the law with O'Connor & Pardow, in San Francisco, remaining with Alfred A. Pardow, a member of that firm, until admitted to the Supreme Court. He also studied in San Francisco under the late Edmond L. Gould and Hon. A. C. Adams, the latter once District Judge of the district comprising El Dorado, Amador and Calaveras counties.

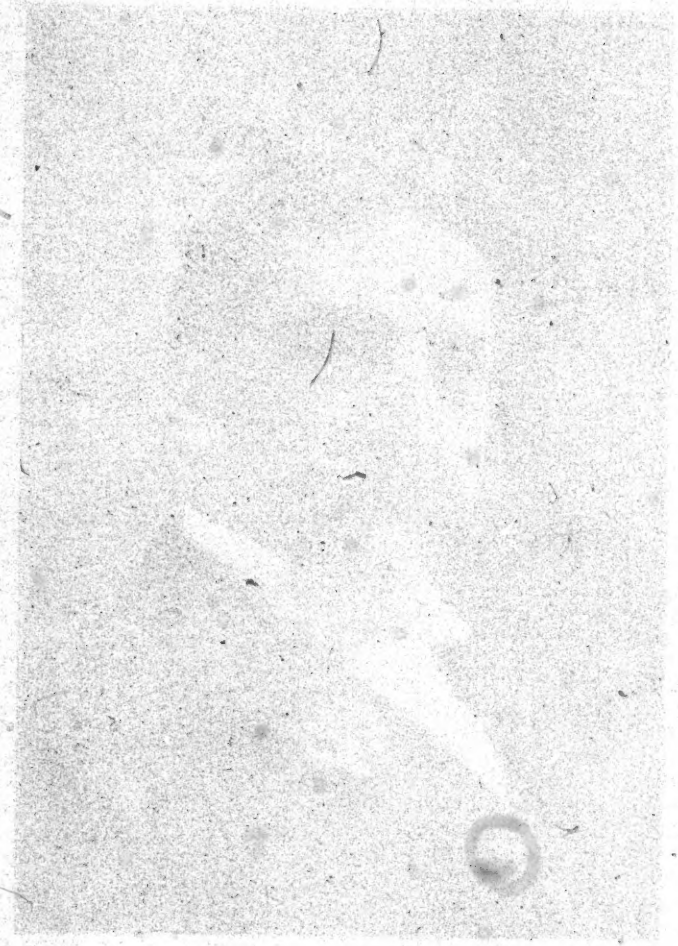
Judge Rust was admitted to the Supreme Court bar on November 10, 1879; to the United States District Court, March 19, 1885, and to the United States Circuit Court, November 11, 1887. He then practiced law in San Francisco from 1879 to 1883, when he removed to Jackson, Amador county. There he formed a law partnership with Hon. A. Caminetti. This partnership continued until January 1, 1887, at which time Mr. Caminetti went into politics. Judge Rust then formed a partnership with the late Hon. John A. Eagan, which continued until the death of Mr. Eagan.

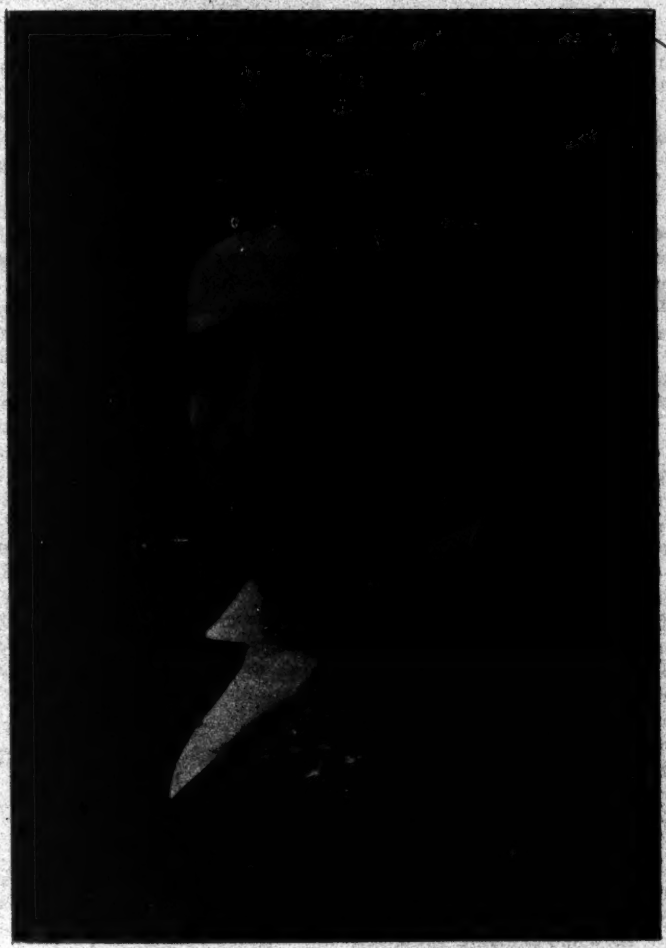
Before going on the bench, our subject served two terms as district attorney of Amador county.

In 1894 he was elected to fill the unexpired term of the Hon. C. B. Armstrong as Judge of the Superior Court of Amador county, made vacant by his death, and in 1896 was re-elected for a full term of six years, which will expire in January, 1903.

Judge Rust is Grand President of the Order of Native Sons of the Golden West, having been elected at the session held at Oroville, in April, 1900.

The Judge's father was Colonel Richard Rust, formerly of Marysville. His mother was Evalina P. Church. They were natives of Vermont. They came to California in 1849, Colonel Rust being secretary to the government commission to establish the boundary line between the United States and Mexico, and who resided at San Diego from 1849 to 1851. He held the position of Alcalde for San Diego county. He was elected county clerk of San Diego county at the first election after the admission of California to the Union. In 1851 he went to Marysville, and established the Marysville *Express*, a newspaper which he published until 1857. During the same time he published the *Placer Herald* at Auburn, Placer county. The *Herald* is still published at Auburn, and is one of the leading papers of Placer county. The old hand-power press is still in the office. It was while he was editing the Marysville *Express* that he fought the duel with Stidger. (See "Field of Honor.") In 1857 he sold out his interests in Marysville and moved to Sacramento, where he was employed as editor of the *State Journal* until 1858. In 1859 he moved to Mokelumne Hill, becoming connected with the *Calaveras Chronicle*, which he conducted until 1861. He then sold his interest and retired from active newspaper business, and purchased a homestead about ten miles above Mokelumne Hill, and





A. A. Sanderson

engaged in domestic pursuits until the time of his death, which occurred August 15, 1872. His wife, the Judge's mother, is still living, and is eighty-four years of age.

A. A. SANDERSON.

Austin A. Sanderson, a Judge of the Superior Court of San Francisco for the term of six years, ending with the year 1896, was born in New York, January 4th, 1848. He is of Puritan ancestry and Revolutionary stock, and was educated in the public schools of his native State. He was admitted to the bar of the Supreme Court of New Jersey in the year 1879. He came to California the following year, located at San Francisco, and practiced there in association with the late Colin Campbell until his election as Superior Judge in 1890. When he was elected to the bench, his party ticket was defeated. He, and one other, were the only Democrats elected at that time. During his term as Judge, many large and important cases were tried before him, among them notably those of "Miller vs. Lux" to determine the interests in that vast estate, and the "Noe Suits," affecting the title to a large portion of the Mission district in San Francisco. Since he left the bench, Judge Sanderson has followed his profession.

Judge Sanderson has a very large and general law practice, and is in receipt of a handsome income. He was united in marriage on the 27th day of November, 1872, to Miss Ella Reddington, at Jamestown, New York, and has three daughters.

Judge Sanderson is a man of very pleasant manners, and is very popular. He is an able lawyer and a man of wide general information. He is now in the prime of life, and in the full tide of prosperity in his profession.

JAMES M. SEAWELL.

Judge Seawell was born January 8, 1836, in Indian Territory, at Fort Gibson, where his father, then a captain in the United States army, was stationed. The captain, Washington Seawell, was born in Virginia in 1802. He was a graduate of West Point Military Academy, and served in the Indian wars in Florida and the war with Mexico. He was retired, February 20, 1862, at the age of sixty, for disability resulting from exposure while on duty. He was colonel of the Sixth Infanty, and brevet brigadier-general. Coming to California in March, 1869, he resided on his ranch in Sonoma county until 1873. He then removed to San Francisco, where he died in 1888—on January 8, his worthy son's birthday, "Jackson's Day," as they still observe it in New Orleans and other Southern cities.

Judge Seawell was a pupil for a short time at Georgetown College, D. C. He entered Harvard University in 1853 as a junior, and was graduated in 1855, with distinction. Then entering the law school of the University of Louisville, Kentucky, he was graduated therefrom in 1857, with the degree of LL. B. For the next four years he resided at Philadelphia, engaged in the practice of law, having first been admitted to the bar by the Supreme Court of Pennsylvania, in December, 1858.

He came to California long in advance of his father, and before the latter was retired from the army. Admitted to the bar of our Supreme Court in 1861, he practiced at the bar of San Francisco for over thirty years, when he went on the bench, where we find him now. After locating in that city, he first entered the office of Shafter, Goold & Dwinelle, afterwards becoming a partner of James McM. Shafter; so continuing down to the year 1871. Thereafter he practiced alone.

The most celebrated case with which Judge Seawell was connected as a lawyer, as we recall (and we have known him for nearly the whole of his career in the metropolis), was the Black will case. James Black, who came to California long before the gold hunters of 1848-49, died in 1870, leaving a very large estate in Marin county. He was married twice, Mrs. Burdell, wife of Dr. Galen Burdell, a leading dentist of San Francisco, was Black's only child. Her mother, the first Mrs. Black, died in Dr. Burdell's operating chair, from the effects of chloroform. Afterwards, Black married a Mrs. Pacheco, a widow with a large number of children. By his will, Black left all of his property to his last wife and her children, to the exclusion of Mrs. Burdell. James McM. Shafter and James M. Seawell were employed to contest the will. The case was tried three times in Marin county, the jury each time disagreeing. It was then transferred to San Francisco, and tried before Hon. M. H. Myrick, Probate Judge, and a jury. This trial lasted three weeks, and the jury rendered a verdict in favor of Mrs. Burdell. No motion was made for a new trial, nor was any appeal taken. The attorneys on the losing side were Alexander Campbell, now of Los Angeles (q. v.); Sidney V. Smith, Sr. (q. v.), and Samuel M. Wilson (q. v.) The ground of contest was that Black was of unsound mind

at the time he made the will. Ex-District Judge J. B. Southard was called in as associate counsel with Shafter & Seawell. After the third trial, Shafter and Southard abandoned all hope, but Seawell and Dr. Burdell nursed it along to victory. The three attorneys, Shafter, Seawell and Southard, received no cash retainer, but large contingent fees. We have understood, on good authority, that Judge Seawell sold his interest for $23,000.

The strong lawyer, James P. Treadwell (q. v.), regarded Judge Seawell as one of our ablest lawyers, and used to send him law business, being himself possessed of great wealth, and not being in regular practice. The Judge is a good Latin, Greek and German scholar.

Judge Seawell was elected to the office of Superior Judge, as a Democrat, in November, 1892. He was re-elected in November, 1898, the Non-Partisans endorsing him; and his present term will end in January, 1905. As a Judge he is calm and deliberate, always in earnest quest of facts, patient in hearing, and true in determination. He is of a contemplative countenance, and of unassuming yet magisterial bearing. There are very few Judges with manner so agreeable on the bench.

The Judge married, at San Francisco, in 1865, the daughter of Rev. Dr. Ver Mehr, an Episcopal divine. His children are two grown sons, Victor F., a business man of San Francisco, and Harry W., an artist.

GEORGE W. SCHELL.

George W. Schell is a native of New York State. He received a good academic education, and taught school before coming of age. He read law in the office of the distinguished Lyman Tremain in Albany, and was there admitted to the bar in 1861. He started for California in the same year, by way of Panama, arriving at San Francisco October 6th. He proceeded at once to Knight's Ferry, Stanislaus county, and entered upon the practice of law. In 1863 he was chosen county superintendent of public schools, being the only Republican elected in that Democratic county. He served the term of two years. From September, 1864 to January, 1869, he was deputy United States collector of internal revenue. In the fall of 1873 he was elected County Judge and served from January 1, 1874, for two years. He refused to be a candidate for re-election, preferring to follow the profession.

Judge Schell was a member (elected at large) of the constitutional convention of 1878. Governor Perkins appointed him, in 1880, a member of the board of State prison directors, where he served four years, being president of the board two years of that period. The Judge was a delegate to the Republican national convention which nominated James G. Blaine for president—Chicago, 1884. In 1888 he was one of the Harrison presidential electors. In June, 1890, he was appointed by the United States attorney-general special attorney for California, to conduct proceedings for the enforcement of the Chinese exclusion act. The government placed a high estimate on his services, and compensated him handsomely. He served in this capacity one year, when the appropriation made by congress for this service was exhausted.

Judge Schell located at Modesto when that place became the county seat in 1871. From

that time until he removed to San Francisco in 1886, he enjoyed a large income from his professional practice, and there was probably no more conspicuous or more respected public man in his section of the State. He became the owner of considerable property. In San Francisco he formed a partnership with Mr. John J. Scrivner, which continued from 1890 to 1896. Mr. Scrivner had, himself, only recently removed to Modesto, where the two gentlemen had property interests in common, which continued long after their law partnership in San Francisco had ceased. Judge Schell has been alone in the practice since that time. He has always been active and influential in the councils of his party. In 1899 he was one of the strongest opponents of the boss element in the Republican county convention of San Francisco, and led the reform forces in

Lucien Shaw

a signal triumph. He was chairman of the committee on platform of that body. This was a large committee, some of the members of which made it generally known that he was the author of the platform that was reported and adopted.

Judge Schell is an earnest, sincere man, descended from Revolutionary patriots on both sides of his house, and takes a deep interest in public affairs, especially in national, State and local politics. At the age of sixty, he is conducting a large and varied practice, and seems to be in his prime.

In person he is well proportioned, not largely, but strongly framed and soundly constitutioned. He is capable of long and continued effort, and is devoted to his calling. Few men have been more active in both public and professional life.

He was united in marriage in 1866 to Miss Sarah J. Chase, daughter of Dr. R. D. Chase, of Albany, N. Y. He has two children, Lena A. and Fred W. The latter is on the *Examiner* staff.

LUCIEN SHAW.

Lucien Shaw, Judge of the Superior Court of Los Angeles county, was born in Switzerland county, Indiana, March 1, 1845. His father was William Shaw, a native of Scotland; and his mother Linda Rous, was a native of England. The son lived on a farm in boyhood and youth. He was educated at the common school, and at an academy. He was graduated from the Indianapolis Law School in 1869, and practiced law at Bloomfield, Greene county, Indiana, until 1883. In that year he came to California, and has always since lived at Los Angeles, excepting two years' residence at Fresno.

Judge Shaw was engaged in the practice of law when Governor Waterman appointed him to his present place on the Superior bench, to fill a vacancy, in March, 1889. He never held nor sought office till he was appointed Superior Judge. He got this appointment on the recommendation of the bar without active seeking. He filled out the term, which ended in January, 1891, and continued on the bench, having been elected on the Republican ticket, in November previous, for a full term of six years. He was re-elected in November, 1896, and his present term will expire in January, 1903.

The first case of public importance to come before Judge Shaw was Bigelow vs. City of Los Angeles, early in 1889, to enjoin the construction of the First-street viaduct by the Cable Railway Company. By the Judge's refusing a temporary injunction pending the action a delay of at least two years in the building of the cable line to Boyle Heights was prevented. Judge Shaw presided at the second trial of the case of the People vs. Richard S. Heath, charged with the murder of Louis B. McWhirter, this trial occurring in March and April, 1894. It attracted public attention because of the tumultuous character of the procedings on the first trial, and because of the prominence of some of the persons who were mentioned in connection with it. The Judge succeeded in maintaining first class order, and both sides were satisfied with the conduct of the case.

Some of the other cases of importance which he has tried are the following: The City of Los Angeles vs. Pomeroy, the most important case ever tried in the county, in which he practically saved to the city its title to the water in the Los Angeles river; Byrne vs. Drain, in which he held the charter was in force on street opening procedings; Farmers' Canal Co. vs. Simmons, 1899, in Kern county; and Fresno Canal & Irrigation Co. vs. Alta Irrigation District.

Messrs. Lee & Scott, the prominent Los Angeles firm, who represented the city, have kindly stated the Pomeroy case as follows:

"The suit of the City of Los Angeles vs. Pomeroy et al., was for the condemnation of lands for the headworks of a municipal water system in the gravelly bottom lands through which the surface stream of the Los Angeles river flows. The defendants claimed that the underground waters in their lands were percolating, belonged to them as the owners of the soil, and should be paid for in condemnation; the city claimed that they were properly a part of the underground stream of the river in whose waters the city as successor to the pueblo, had paramount rights.* As the Supreme Court says in affirming the judgment in favor of the city (124 Cal., 597-634): "This is the pioneer case of its kind, so far as this Court is concerned." It involved the application of the common law rules as to underground streams to the entirely new conditions existing in countries like Southern California. Judge Shaw's instructions to the jury expressed most clearly and elaborately the law of the case as to the correct definition of under-

*By virtue of the original grant from Spain to the ancient Pueblo.—EDITOR.

ground streams, the relations to the surface stream of adjacent and subjacent underground waters, and the respective rights and obligations of the owners of the waters of the stream and of the soil; and in his refusal to give certain other instructions asked by defendants he established the proposition that the city, as the successor to the Pueblo, was not limited in its use of the waters of the river to the particular purposes for which the Pueblo used it, or to the four square leagues of territory originally embraced within its limits. He was in every instance upheld by the Supreme Court, and the case will always remain the leading case in the State upon these very important subjects. Its value in establishing water rights in Southern California, and especially to the City of Los Angeles, cannot be overestimated."

The instructions in this Pomeroy case were very full and elaborate, on the subject of underground waters especially; they were all prepared by Judge Shaw, and involved a modification of the generally accepted rule of the common law giving percolating waters to the owner of the soil, and the adaptation of the law to the new conditions found in arid countries such as Southern California. They were in all respects upheld by the Supreme Court, and the case will always remain a leading case on that important subject of underground waters. The practical effect of the rulings was to preserve to the city its right to the water of the river, as, if the contrary rule had been adopted, the water of the river would have been immediately drained away by ditches and tunnels made by private parties in the adjacent gravelly lands. It is also of great importance in settling the rights of many other water supplies in Southern California similarly situated.

In Byrne vs. Drain, Judge Shaw held that since the amendment of 1896 to the constitution the street opening law of March, 1889, ceased to be operative in Los Angeles, and the provisions of the city charter on the subject revived and became the law controlling those proceedings. The decision was affirmed by the Supreme Court on appeal.

Owing to his long experience on the bench, and the number of cases involving water rights which he has tried, he has often been called to preside in important cases in other counties. One of these was the Farmers' Canal Co. et al. vs. Miller & Lux, in Kern county, in 1899, the trial lasting five weeks and requiring the determination of the rights to all the waters of Kern river, and the claims of some fifteen water companies thereto. Another case was that of Fresno Canal & Irrigation Co. vs. Alta Irrigation District, in Fresno, in 1900, the trial lasting seven weeks, with the result of settling the right to the greater part of the flow of Kings river from which the great raisin district is supplied with water for irrigation.

The Judge was married to Miss Hannah Hartley, of Michigan, on the 29th of July, 1873.

M. L. SHORT.

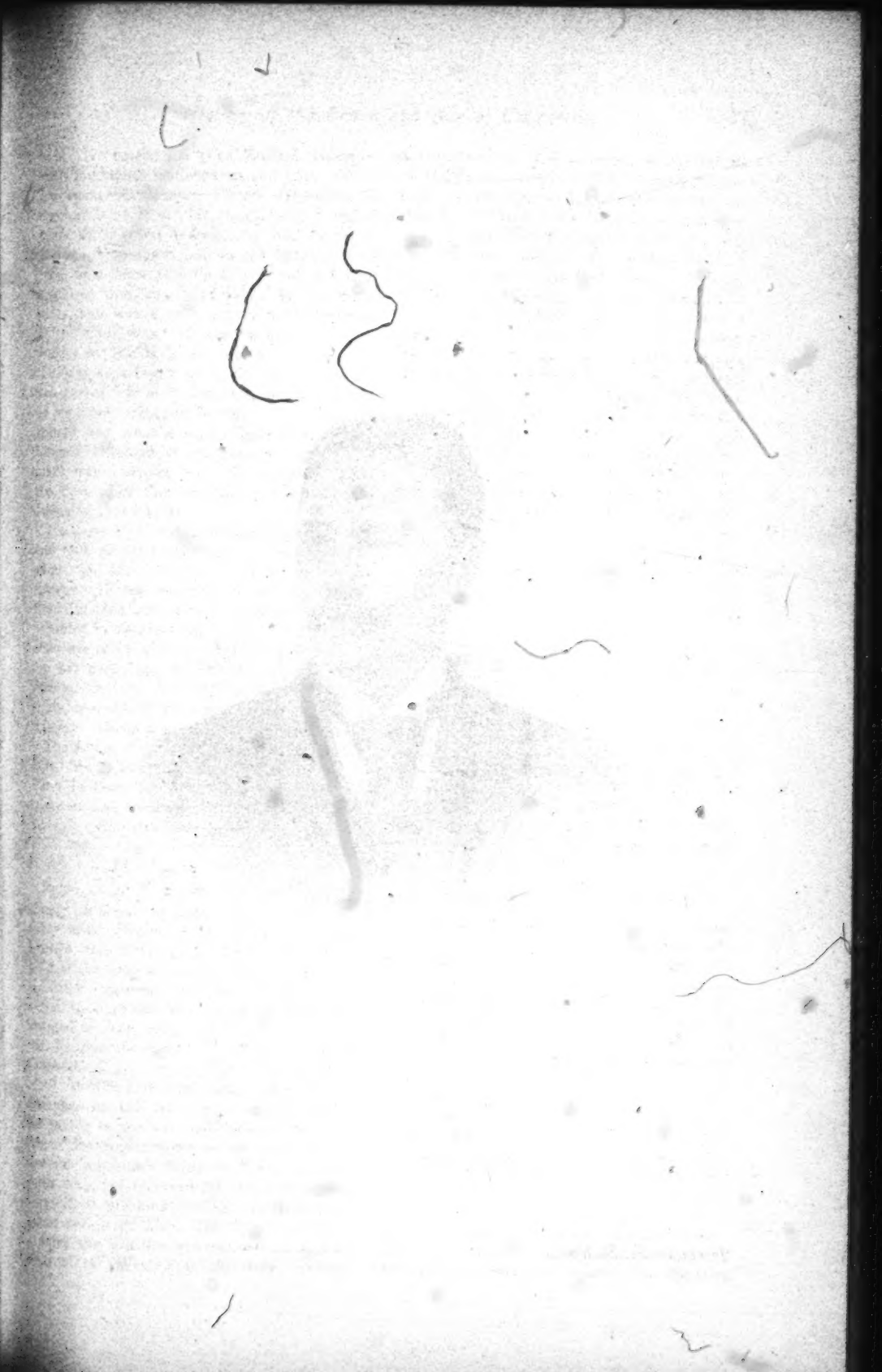
Montgomery Livingston Short was born in Ulster county, New York, August 4, 1851. While he was quite young his parents moved to Iowa, and from there crossed the plains in 1863, landing in San Jose, July 4 of that year. In 1874 they went to Tulare county, settling in the famous Mussel Slough district. Mr. Short left the public schools at the age of fifteen, and from that time he conducted his own education. For nine years he taught school—two years of which he was principal of the Hanford schools. He studied law, passed examination before the Supreme Court, and was admitted to the bar in 1885. He first practiced in San Diego county, and was elected city attorney of Oceanside. Resigning that position in 1891, he returned to Kings county, and on its organization became its first district attorney, to which position he was re-elected by an increased majority at the election of 1894. His earnestness and sincerity of character mark him as a steadily growing man. His careful and judicious methods of handling public prosecutions have saved the county thousands of dollars, while his extreme impartiality in conducting cases commands universal respect.

In November, 1898, Mr. Short was elected to fill the unexpired term of Hon. Justin Jacobs for the office of Judge of the Superior Court of Kings county. On November 6, 1900, he was re-elected to the office of Superior Judge for a full term of six years.

B. N. SMITH.

Judge Smith, of the Los Angeles Superior Court, was born, August 13, 1839, in McHenry county, state of Illinois. He was the youngest of thirteen children. His parents were from New England. His grandfathers on both sides were officers in the Revolutionary War, and men of education and fortune. His father was a captain in the War of 1812, and a member of the New York legislature in 1832.

Judge Smith was raised on a farm in Illi-



Jeremiah F. Sullivan

nois. He received a good English education with the higher mathematics and Latin, in the academies of northern Illinois. He came to California in 1860. He taught school, mined some, drove teams in freighting over the Sierra Nevada Mountains, and in the latter part of 1863 went back to Illinois and enlisted in a regiment that had been raised in his home place, and served as a private until the close of the Civil War. He then went to the University of Michigan, and was graduated from the law department as L. B. He began the practice of law at Woodstock, the county seat of his home county in Illinois. He put out his shingle and went it alone, depending only on himself, although at the time the bar of that place was a strong one. He succeeded from the first. For thirteen years he was County Judge of that county.

He came to Los Angeles in February, 1887, and took an active part in the Harrison campaign of the following year as a stump-speaker. He was elected Judge of the Supreme Court in 1890, and re-elected in 1896.

Added to his great experience and high character are other qualities that adorn the bench. He has deep legal knowledge, broad, general information, the judicial temper, the habit of study, honesty of mind and patience in investigation. He is always practical and sincere.

The Judge is a man of family. His mother, Mrs. Mary Smith, who lived, like Thomas Parr, in three centuries, died at the Judge's home in Los Angeles, so recently as January 11, 1901. She was born September 22, 1795.

LUCAS F. SMITH.

Judge Lucas F. Smith was born in Wells county, Indiana, in 1845. He worked on a farm until fifteen years of age, when he learned the printing business. In August, 1862, at the age of seventeen, he enlisted in Co. G, 101st Regiment Indiana Volunteers, and served through the war, being honorably discharged in July, 1865. He was a member of the Fourteenth Army Corps, Army of the Cumberland, and served under General Rosecrans at Chickamauga, and under General Sherman in the Atlanta campaign, and in the march to the sea, and through the Carolinas. He was present at the surrender of General Johnston's army in North Carolina. Then with his regiment he marched through Virginia to Washington City, and was in the grand review of May, 1865.

After the war he was offered an appointment at the West Point Military Academy, but declined it, and entered the University of Michigan, and was graduated from the law department in the spring of 1868. After visiting the Western states in search of a location, he settled at Bonham, Texas. He was elected county attorney of Fannin county in 1869, and was appointed district attorney of the Eleventh judicial district, composed of five counties, in 1870. In 1874 he formed a law partnership with Gov. J. W. Throckmorton and Judge Brown, at Sherman, Texas. Soon afterwards he was appointed United States district attorney for New Mexico, which office he resigned to raise a company to fight the Apache Indians, who were then murdering the settlers indiscriminately. For this service, he was offered a commission in the regular army, but did not accept it. He then formed a law partnership with E. W. Crozier, Esq., son of ex-U. S. Senator Crozier, at St. Louis, Mo. While there, he was offered and accepted a law partnership with Judge J. M. Hurt, of Dallas, Texas. He continued with Judge Hurt until the latter was elected to the Appellate Court bench of Texas in 1878, when he formed a law partnership with Col. W. L. Crawford, one of the ablest and best known lawyers in the Southwest. In 1882, he was married to Miss Della Gouldey, of Louisiana, and has six children. In 1885 he visited California, and was so pleased with the State that he closed up his business in Texas and moved to Santa Cruz, where he engaged in the practice of law. In November, 1896, he was elected judge of the Superior Court, which position he now holds.

JEREMIAH F. SULLIVAN.

Jeremiah F. Sullivan was born at Canaan, Conn., on August 19, 1851. His parents, who were natives of Ireland, brought him with them to California at the age of eight months in April, 1852. His father, Michael Sullivan, is represented as having been a man of judgment, wit, and excellent memory. Of little early schooling, Michael Sullivan was self-educated to a considerable degree. He was an ardent lover of American institutions, and was well-informed in the history of the United States. After arriving in California he worked as a miner for ten years in the mines of Nevada county. He was next foreman in a mine at Virginia City, Nevada.

J. F. Sullivan's childhood was passed in Nevada City, Cal. He was in a private school until ten years old, when his parents removed to San Francisco. He attended St. Ignatius

College for eight years, graduating therefrom as bachelor of arts. He afterward received from that institution the degree of master of arts. He taught in that same college in the classics and mathematics, and at the same time studied law. Continuing his law reading for two years more in the office of a well-known San Francisco firm, he was admitted to practice in the Supreme Court of the State in 1874. He began the practice at once in that city. In 1877 he was elected a member of the board of education. In 1879 he was elected a Judge of the Superior Court, being nominated by the Democrats and endorsed by the Workingmen's party. He was the youngest of twelve judges elected at that time. Among the cases submitted to him for adjudication was that of Burke against Flood, one of a number of cases brought by the stockholders of the California and Consolidated Virginia mines against the bonanza firm, in which the latter, as trustees, were charged with fraud in the diversion and appropriation of the profits of the mines. This suit, upon which the rest depended, the same questions arising in them all, and involving upward of a million dollars, he decided in favor of the shareholders. It was never appealed, but was settled outside of the court by compromise.

On December 24, 1884, Judge Sullivan decided the case with which his name will ever be inseparably associated, that of Sarah Althea Hill against ex-Senator William Sharon, a history of which remarkable controversy will be found elsewhere in this volume.

The Judge was re-elected to the Superior Court bench for a term of six years, beginning with January 1, 1885. In 1886, he was nominated by the Democratic party for Justice of the Supreme Court, and was defeated. In 1888 he was again nominated, and, although the city of San Francisco gave him the unparalleled majority of 8,000, he was defeated by Hon. John D. Works, of San Diego, for whom the southern part of the State, as a result of a great increase of population, cast a phenomenal vote.

Judge Sullivan resigned from the Superior Court bench in 1889, for the same reason that afterwards influenced Supreme Judge Paterson and which has at times controlled the like action of other Supreme and Superior Judges, namely, because the practice of law was of higher consequence from a financial standpoint. He formed a partnership with his brother, Matthew I. Sullivan, which still exists. The two brothers make a strong combination, the junior member being also a man of strong legal talent. The firm has been in the full tide of prosperity since it was established, over ten years ago.

Judge Sullivan was united in marriage on September 13, 1876, to Miss Helen Bliss, daughter of George D. Bliss, a California pioneer, who had amassed a fortune in the cattle business.

Judge Sullivan has been president of the Young Men's Institute, and has been prominent in the fraternal and benevolent work of other Catholic societies. In an address on St. Patrick's day, 1886, in San Francisco, he said:

"It is not to be wondered at that the Irish people, proscribed mainly on account of their religion, should prize the mystic bond that holds them together in the embrace of an enduring nationality. To no one who has studied the history of Ireland can it seem strange that the Irishman's loyalty to his race and his faith should be blended in a manner so unique. It is not because the Irish Catholic does not understand and fully appreciate the relative allegiance that he owes to his government and his God. The Catholic citizens of the United States do not desire a union of church and State, a blending of functions essentially distinct. They do not wish, nor would they consent to, the ascendancy of any church within the State. The Irishman would be the first, and rightly so, to resent the wrongs of a system under which he himself has suffered so long and so grievously. Grattan, the leader and the beloved of all the Irish people, as other leaders before him and since, was a Protestant. He expressed the sentiment of Catholic Ireland when he said: 'We hold the right of private judgment in matters of religion to be as sacred in others as in ourselves'; also when he said, 'The Irish Protestant can never be free till the Irish Catholic shall cease to be a slave.'"

A. M. STEPHENS.

Albert M. Stephens was born in Tennessee, March 22, 1846. His father, Colonel William H. Stephens, was a prominent lawyer of that state. A. M. Stephens was educated at the University of Mississippi, and studied law with L. Q. C. Lamar at that institution. He afterwards attended the Lebanon, Tennessee, Law School. He began practice in January, 1868, at Memphis. He was elected district attorney of the Circuit Court of Shelby county, of which Memphis is the county seat, in 1870. He practiced law at Memphis until 1874. He then moved to Los Angeles, California. He was elected County Judge of Los Angeles county in 1877, and served until the County Court was abolished by the adoption of the new constitution, in January, 1880. Since that time he has been engaged in active practice at Los

D. K. Trask

Angeles. His two oldest sons, William W. Stephens and Albert M. Stephens, Jr., are members of the bar, and associated with him. His wife was the daughter of Major M. J. Wicks of Memphis, to whom he was married in 1870.

D. K. TRASK.

Dummer Kiah Trask, a Judge of the Superior Court of Los Angeles county, was born in Cincinnati, Ohio, July 17, 1860. He is descended from Captain William Traske, one of the five "Old Planters" of Salem, Massachusetts, who located there in 1628. His parents removed to Jefferson, Maine, when he was but a year old, and he grew up there. When he was six years old his father died. His mother still occupies the old homestead in Jefferson, at a great age.

Our subject, having attended the district school, and worked in summer on the farms and in the mills of his neighborhood, began teaching school at the age of seventeen. While thus employed he also attended the Nichols Latin School at Lewiston. He afterwards graduated from the Waterville Classical Institute.

Judge Trask came to California in May, 1884, and located first in San Joaquin county. He taught school, served as a member of the board of education, and was principal of the Stockton Business College and Normal Institute. At this institution he had under his instruction at different times several hundred teachers and business men from all parts of the Pacific Coast.

Judge Trask gave up teaching in 1889, and having prepared himself for the bar, he located in Los Angeles, in 1890, and commenced practice. He was prosecuting a fine law business when, in November, 1898, Superior Judge Van Dyke was elected to the Supreme bench. Governor Budd appointed our subject to serve as Superior Judge for the unexpired term of two years. The new Judge in this period showed such impartiality and industry, and brought such general ability to the discharge of his duties, that, at the general election of November, 1900, although he was a Democrat, and his party was in a hopeless minority, he was elected his own successor for a full term of six years.

During Judge Trask's two years on the bench, thus far, a number of appeals have been taken from his decisions, but he has always been sustained by the Supreme Court.

The Judge has always kept alive his interest in the cause of education. He was a member of the Los Angeles City board of education for 1893-94. He is prominent in the order of Knights of Pythias. He is Grand Prelate of the order in this State.

JAMES D. THORNTON.

James Dabney Thornton, who was a justice of the Supreme Court for the period of eleven years, beginning with the inauguration of the present constitution and the organization of the court in January, 1880, was born at his father's country residence, Oak Hill, Cumberland county, Virginia, January 18, 1823. His father, William Mynn Thornton, was a farmer, planter and merchant, and of English ancestry. His mother, Anderson, was of Scotch-Huguenot lineage. The son in boyhood attended the grammar and classical schools of his neighborhood, the principals and teachers of which were nearly all able instructors, college graduates, and of high family. In the fall of 1838 he entered the University of Virginia, where he took a three years' course. That great institution, founded by Jefferson, was divided into various schools, each issuing diplomas. Our subject was duly graduated from the schools of ancient languages, modern languages, chemistry, natural philosophy, moral philosophy, and received certificates of proficiency in political economy and geology and mineralogy.

It was now July, 1841, and he began reading law in his native county. He studied alone, but had the counsel of H. P. Irving (late of the San Francisco bar), who was his preceptor, if he had any. From the fall of 1842 to the fall of 1845 he was clerk in a commission house in Richmond for the sale of tobacco and other produce. During this laborious period he kept at his law books at night. In 1847 he made a visit to Alabama. On February 17, 1848, he married, at Eutaw, Green county, in that state, Miss Sarah, daughter of Harry I. Thornton. The lady, who is still living, is no blood relative of his. Her father, who was then a distinguished lawyer, arrived in California on January 1, 1852, having been appointed by President Fillmore, in 1851, one of the United States commissioners on California land claims. He died at San Francisco in January, 1861. He was the father of the Harry I. Thornton who won distinction in law and politics, and on the battle field, who is affectionately remembered all over the coast, and who died at Fresno, in

1895. His widow, Lucy Crittenden Thornton, survived until 1885, reaching the age of eighty-three years.

Returning, for a brief season, to Virginia, Mr. Thornton went back to Alabama to live, in November, 1848. He was admitted to the bar in that state in February, 1849, and practiced there until the spring of 1854, when he came to California, taking steamer at New Orleans on May 22, and arriving at San Francisco on the 14th of June. He was admitted to the bar of our Supreme Court in 1855. From that time down to as late as 1900 he followed the profession at San Francisco, excepting the considerable period when he was on the bench, and an intermission of some fifteen months during the Civil War, when, like Solomon Heydenfeldt, Gregory Yale, A. P. Crittenden, Volney E. Howard, Edward J. Pringle, and other strong and bright men from the Southern States, he refused to take the iron-clad test oath prescribed by the legislature for practicing attorneys. He did take that oath, however, after holding out for the time stated.

Immediately after his arrival, our friend joined the law firm of Thornton & Williams (the elder H. I. Thornton and John J. Williams), which now became Thornton, Williams & Thornton. The partnership was arranged before he left the South. Upon the death of the senior member, in 1861, the firm became Williams & Thornton, and so continued until Mr. Thornton became judge of the Twenty-third Judicial District Court, San Francisco. This was a newly-created tribunal, and Judge Thornton was the only occupant of its bench. He was appointed by Governor Irwin, and served from April, 1878, to the end of 1879, when the court passed away with the old constitution.

In the fall of 1879 Judge Thornton was elected, as a Democrat, one of the associate justices of the Supreme Court, and so became one of the first members of that tribunal under the present constitution, adopted in that year. He and Justice McKinstry, at the organization of the court, in January, 1880, drew the longest terms—eleven years. Judge Thornton served out his term. It is worth noting that in the great case of the Spring Valley Water Company vs. the City of San Francisco, he filed a dissenting opinion in favor of the city. Attention may also be specially directed to his opinion in the notable partition suit of Emeric vs. Alvarado in 63d California Reports, page 529.

The Judge has always been a Christian man, and has long been an elder in St. John's Presbyterian Church; and in this connection it is of interest to refer to his remarks from the Supreme bench when the death of Judge Samuel Bell McKee was announced, March 10, 1887, in which the words occur: "He was a believer in the religion of Jesus Christ." At a meeting of the San Francisco Presbytery on March 3, 1887, he, by appointment, read an original paper, entitled "A Voice from the Pew to the Pulpit."

The Judge is a man of small means, owning his own home in the great city. Both he and Mrs. Thornton are in vigorous health. They have had eleven children, of whom six are living—three sons and three daughters. The sons are Crittenden Thornton, the well-known San Francisco attorney; William, a business man of that city; and John, a lawyer at Nome, Alaska. The daughters are Elizabeth, the wife of Admiral Watson of the U. S. Navy; Margaret, wife of Abbot Kinney of Los Angeles, a business man and orchardist, who is also a man of a high order of ability as a general writer, and is the author of several books; and Miss Virginia, who resides with her parents.

J. M. TROUTT.

James Morris Troutt, a San Francisco Superior Judge since January, 1891, was born in Roxbury (now a part of Boston), Mass., December 20th, 1847. He came to California in the fall of 1853, and has always since lived at San Francisco. His father, Hiram J. M. Troutt, arrived in that city in March, 1850, via Cape Horn. The son attended the public schools and in 1871 was graduated at Harvard College. He was admitted to the bar of the Supreme Court of California in August, 1874. In 1877 he and Ramon E. Wilson, now deceased, became partners under the firm name of Troutt & Wilson. Subsequently Mr. Wilson became a partner of Judge M. M. Estee. In 1881, Judge Jas. C. Cary and Mr. Troutt became partners in law practice.

In 1882 the consolidated Republican conventions nominated Mr. Troutt for the Superior bench, with Judges Waymire and Allen, and Columbus Bartlett. His party lost everywhere in California in that campaign. In 1885 and 1886 he was first assistant district attorney in San Francisco. In 1890, he was elected to the Superior bench, for the unexpired term of Judge T. K. Wilson, resigned, and has since

been elected twice for a term of six years. His present term will expire in January, 1905.

Judge Troutt was initiated in Ophir Lodge, No. 171, I. O. O. F., in 1879, and soon became Noble Grand. He also passed the chairs of Oriental Encampment, and then joined the Patriarchs Militant. He was degree master of Excelsior Lodge No. 2 for several terms, resigning on account of illness. He was chosen by the delegates of the general relief committee as president of that admirable body. He assisted in the organization of "The Odd Fellows' Literary and Social Club," and was its third president, the late Walter B. Lyon having been its first president. He and his wife are members of Templar Rebekah Lodge.

In 1896 he became associated with the Masonic Fraternity on the recommendation of

Reuben H. Lloyd, and in December, 1898, he was elected Worshipful Master of Oriental Lodge No. 144, F. and A. M., and is now Past Master. He holds the office of "King" of San Francisco Chapter of Royal Arch Masons, and is now Past High Priest. He is a Knight Templar of California Commandery, and a Mystic Shriner of Islam Temple, and also a Scottish Rite Mason, having received thirty degrees. He has passed the chairs of Fidelity Lodge, A. O. U. W.

Judge Troutt possesses the most generous and philanthropic nature and the most cordial manners, and the circle of his devoted friends is very large in the great city which he has known almost from its infancy, and almost from his own infancy. His heart beats for his kind, and if he had the dispensing of happiness, he would make it universal, and human experience would be all exempt from ill.

The Judge was married at San Francisco, April 29, 1890, to Miss Lu May Kendall. They have no child.

The decision of Judge Troutt in the matter of the application of Mrs. Craven for a family allowance out of the estate of James G. Fair was rendered on the 10th of August, 1900. The petitioner, as Nettie R. Fair, made her application in April, 1899, praying for an order of court directing that the sum of five thousand dollars per month be paid out of the estate to her as the widow of deceased. The petition was opposed by the executors and heirs, on the principal ground that petitioner was not the widow of the deceased. Judge Troutt found that she was not such widow, and denied her application. We give in full the carefully prepared syllabus of the Judge's written opinion in this matter, which is of decided interest, and should be read in connection with the article on the Fair trust and will case, on pages 335-345 of this History. It is as follows:

1. Petitioner claimed to have entered into a contract of marriage with Senator Fair on May 23, 1892, and produced a writing reading:

"San Francisco, Cal., May 23, 1892.

"I take Nettie R. Craven to be my lawful wife. "JAMES G. FAIR.

"I take for my lawful husband James G. Fair. "NETTIE R. CRAVEN."

2. This writing *if genuine*, merely constituted a formal consent to become husband and wife; hence the story of its strange experience need not be told. No wedding ring, or present, was given to petitioner. On June 1st, following the contract, she left for the East; he did not go to the boat or train to say good-bye; and she occupied a lower berth in a Pullman sleeper.

3. No license permitting a marriage was ever procured. Nor was the marriage ever solemnized in pursuance of Sections 55, 68, 70, 71, 72, 73 and 74, Civil Code, unless certain evidence introduced by her establishes that a marriage ceremony was performed at Sausalito, Marin county, California, in July or August, 1892, by a Justice of the Peace, named Simpton.

4. Although petitioner says that she and Senator Fair went to Sausalito to be married by a Justice of the Peace, in July or August, 1892, because the Senator desired to satisfy and placate petitioner's daughter; yet it appears that in January, 1893, when her daughter visited San Francisco and met the Senator, nothing was ever said to her daughter by Senator Fair from which any inference could be drawn that any marriage had been solemnized between her mother and himself by any Justice of the Peace.

5. During a period of *seven years* succeeding this Sausalito episode, and until after her petition was filed herein, she made no attempt to obtain any information respecting *the name* or the *records* of the Justice of the Peace who solemnized her marriage to the Senator; but in July or August, 1899, through Louis F. Dunand, she secured the services of Adolph Sylva to look up the record of her marriage by a Justice of the Peace of Sausalito. One of her attorneys gave her $200 to pay Sylva as a retainer if she thought best; she paid it to Dunand and he paid it to Sylva; and on a second trip to Sausalito in July or August, 1899, Sylva brought Simpton to her, and he addressed her as "Mrs. Fair." She says she did not agree to pay Sylva anything besides the $200, or to pay Simpton anything; but she made a written contract with Dunand to pay him $30,000 for any services that she might want him to perform anywhere and in any matter.

6. The court does not hesitate to declare the story of the Sausalito ceremony to be a most improbable and incredible one. To establish it to be *a fabrication*, needs not the contradiction of Justice Simpton, nor the explanations of Dunand or Sylva.

7. Marriage is defined by Section 55, of our Civil Code, to be a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties or obligations.

8. They did not live together, they did not have a common home, or a common name. She was never addressed otherwise than as *"Mrs. Craven."*

9. Petitioner, after Senator Fair's death, produced a "will," written in lead pencil, which she testified Senator Fair wrote and delivered to her in her house, in her presence, on September 24, 1894, in which she was not mentioned; and she also produced two *"deeds"* of valuable property, which she also testified that Senator Fair gave to her for her support, on the same day that he wrote his will in lead pencil in her house, the income of which was $4,000 per month; these deeds were not then acknowledged, she returned them to him to be acknowledged, and he returned them to her again duly acknowledged, in December, 1894.

10. This pencil *will* and these *deeds* were attacked by respondents and considerable evidence offered to prove that they were *forgeries.*

11. *Theodore Zytka*, one of the expert witnesses, aptly and admirably demonstrated in this proceeding the facility with which a person's handwriting may be simulated. He placed a genuine writing upon glass which had been substituted for the cover of a box, putting a lighted candle within the box and beneath the glass. A sheet of paper was placed upon the genuine writing and the letters could be distinctly seen and could be easily traced; and he wrote words, which were dictated to him, by tracing letters, and sometimes whole words, that were in the genuine writing. This was called the "Transparency Tracing Method." This *same expert*, by the use of a gelatine-celluloid sheet, so called, traced various words written in certain lines of this will and placed them over the same words in other lines of the will, and the letters superposed—they occupied exactly the same space, were exactly the same length, and exactly the same distance and the same peculiar correspondence with each other existed.

12. The court is convinced *beyond all doubt* that the *pencil will and the deeds* were not written or signed or delivered by Senator Fair, but that they *are forgeries.*

13. Senator Fair died December 28, 1894; the next morning the petitioner read in one of the newspapers a statement from his last will dated September 21, 1894, wherein he declared that he was not married; yet she never asserted that she was his widow until June 25, 1896, when questioned on the subject as a witness before the court.

14. Under the law of California, where there is no solemnization there is no assumption of marital rights, duties or obligations, until the commencement of cohabitation; and by "cohabitation" is not meant simply the gratification of the sexual passion, but "to live or dwell together, to have the same habitation, so that where one lives and dwells there does the other live and dwell also" (Yardley's Estate, 75 Pa. St. 207; *Sharon vs. Sharon*, 79 Cal., 670); a mere introduction of a woman as a wife is not sufficient to prove a marriage where there is no proof of a present contract of marriage, and that the parties lived or dwelt together in the same habitation; and a mere stopping together as transient guests at an hotel during a short journey does not make the parties habitants of the hotel or prove cohabitation.

15. Other cases bearing upon this question are: *White vs. White*, 82 Cal., 427; *Hinckley vs. Ayres*, 105 Cal., 357; *Hite vs. Hite*, 124 Cal., 389; *Harron vs. Harron*, 60 Pacific Reporter, 932.

16. The petitioner never became the wife, and she is not the widow of James G. Fair, deceased.

EDWIN P. UNANGST.

Edwin P. Unangst, Judge of the Superior Court of San Luis Obispo county, was born in Warren county, New Jersey, January 2, 1858. His parents, Jacob S. and Sarah, were both descendants of German families, for many years living in the eastern part of Pennsylvania. Judge Unangst lived with his parents in New Jersey until fourteen years of age, when the whole family removed to Nebraska and settled near Lincoln. His parents' means were extremely limited. He attended the public schools, and on January 4, 1875, entered the preparatory school of the State University at the beginning of the winter term. After completing the two years' course in the pre-

paratory school, and a four years' classical course in the university, he was graduated, June, 1881, with the title of A. B. He supported himself by teaching and labor during vacations, and remaining out of college one year to teach. After graduating, he was principal of the public schools of Geneva, Nebraska. This position he resigned in March, 1882, and went to Utah and engaged in railroad surveying in the Wasatch Mountains, north of Ogden. He remained with the surveying party for a little over a year, and then came to California in the summer of 1883. He entered the junior class of Hastings College of the Law at San Francisco as a non-resident student in the same year, and having completed the courses of the junior and middle classes, was admitted to the senior class of 1885-86. He was admitted to practice upon examination before the Supreme Court at San

Francisco, February 1, 1886, and located at San Luis Obispo, in June, 1886. In 1887 there was formed the law firm of Earll, Unangst & Earll, with Hon. Warner Earll, ex-Justice of the Supreme Court of Nevada, and his son, A. R. Earll. This firm was dissolved by the death of Judge Earll, and the election of A. R. Earll to the office of district attorney of San Luis Obispo county in the year 1888. Judge Unangst continued law practice alone till he formed a partnership with G. Ward Kemp (now of Seattle), in June 1895, which partnership was dissolved upon the election of Judge Unangst to his present office of Superior Judge in November, 1896.

The Judge was a member of the board of trustees of the city of San Luis Obispo from January, 1894, till his election as Judge of the Superior Court, when he resigned from that board. He was President of the board of trustees from April, 1894, till his resignation. On February 27, 1889, the Judge was married to Anita Murray, daughter of Walter Murray, a member of Stevenson's Regiment, who was one of the pioneer attorneys of San Luis Obispo county, and Judge of the District Court of the First Judicial district of California, embracing the counties of San Luis Obispo, Santa Barbara and Ventura, at the time of his death in 1875.

Judge Unangst ran for the office of Superior Judge at the election of 1896 against Hon. V. A. Gregg, the then incumbent, and William Shipsey, Gregg receiving 1134 votes, Shipsey 1121, and Unangst 1414. His office has been a busy one. The county embraces the large area of 3500 square miles, and has a population of some 17,000 people. The interests in the county are diversified, giving rise to almost every class of litigation. During the period of little over three and a half years of incumbency, the Register of Actions shows that there have been commenced in civil and criminal cases and probate matters, something over 1100 cases.

The Judge is on the Democratic side in politics.

WILLIAM C. VAN FLEET.

William Cary Van Fleet, a Justice of the State Supreme Court from April, 1894, until January, 1899, was born in Ohio, March 24, 1852, the son of a farmer who had removed from his native state, Pennsylvania. He was educated in his native village, Monclova, and in Toledo, Ohio, and coming early in life to California, located at Sacramento and studied law. He was admitted to the bar of the Supreme Court at the age of twenty-one, April 15, 1873. He was a member of the assembly at the twenty-fourth session, 1881, and a State prison director, 1883-84.

Judge Van Fleet, who has always been of Republican politics, was elected Judge of the Superior Court of Sacramento, first, in the fall of 1884. He served a full term, and was re-elected without opposition in 1890. He resigned the office in 1892, November 7, and removed in the same month to San Francisco.

On April 25, 1894, Governor Markham appointed Judge Van Fleet a Justice of the Supreme Court, in place of Judge Paterson, resigned. At the next election, November, 1894, the Judge was chosen to fill out the unexpired

term of four years. At the election in November, 1898, he was again one of the two Republican nominees for Supreme Judge. His party ticket was successful, but Judge Van Fleet was defeated by a small majority, owing to a misconception in the minds of many persons of the doctrine of a decision of the Supreme Court in the case of Fox vs. Oakland Street Railway Company, 118 Cal. 55. This was an action for damages for the loss of a child (four and a half years old) of a laboring man, the child having been accidentally killed by a street railroad car. The opinion was written by Judge Van Fleet, and some of the language employed to state the doctrine relied on was excepted to by a few newspapers as making a distinction between the rich and the poor in the administration of justice. Quite naturally, a man in the humbler walks of life, uninformed in legal science, might see in this decision as thus interpreted by the newspapers, a discrimination against his class, but every lawyer who read it must have accepted it as sound in law and sustained by judicial authority, unbroken through centuries, and as being susceptible of no such construction as that sought to be put upon it.

It is very proper to place on record in this History the language used by Judge Van Fleet in this case, to which exception was taken and which so unexpectedly operated to terminate his distinguished career on the Supreme bench.

The question under discussion was that of excessive damages, and among other things, not pertinent here, it was said:

"There was no averment or evidence of peculiar or special damages, nor the right to exemplary or punitive damages, the plaintiff's cause of action resting soley upon his right to recover for the loss of the services of his child resulting from its death.

"The jury were properly instructed that they could award nothing in the way of penalty for his death, nor for sorrow or grief of his parents, but must confine their verdict to an amount which would justly compensate plaintiff for the probable value of the services of the deceased until he had attained his majority, taking into consideration the cost of his support and maintenance during the early and helpless part of his life; that while they could consider the fact that plaintiff had been deprived of the comfort, society, and protection of his son, this consideration could only go to affect the pecuniary value of his services to plaintiff.

"Upon the evidence and these instructions the jury gave a verdict for six thousand dollars.

"We think it quite manifest, upon its face, that the verdict was actuated by something other than a consideration of the evidence. Under no conceivable method or rule of compensation permissible under the evidence could such a result have been attained. There was nothing to indicate that the value of the child's services would have been greater than that of the ordinary boy of his age, assuming that such a fact would have been pertinent. He was a mere infant, and for many years at best, under ordinary conditions—and it is by such we must judge—he would have remained, however dear to their hearts, a subject of expense and outlay to his parents, without the ability to render pecuniary return. And common experience teaches further that, even after reaching an age of some usefulness, he yet would continue for the better part of his remaining years of minority more a source of outgo than of income. . . .

"But assuming that the deceased would have been set to useful and valuable employment of some appropriate character as early as ten years of age, which is unusual, at no average rate of wages or income which he could reasonably have earned, would it be at all probable that in the time intervening his majority he could have earned, over and above the cost and expense of his maintenance, the very large sum given by the verdict?

"Under the circumstances of the case it is solely by the probabilities that these things can be estimated. And while in no sense conclusive, we have the right, and it is most reasonable in judging of the probable character of occupation the deceased would have pursued, to regard, with the other circumstances surrounding him, the calling of his father—since experience teaches that children do very frequently pursue the same general class of business as that of their parents. (*Walters* v. *Chicago, etc., R. R. Co.*, 41 Iowa, 71, 73.)"

Upon his retirement from the Supreme Bench at the opening of the year 1899, Judge Van Fleet resumed practice at San Francisco with E. B. and Geo. H. Mastick. In August, 1899, upon his return from a short trip abroad, Judge Van Fleet was appointed by Governor Gage a member of the commission for the revision and reform of the law, which office he now holds.

In April, 1877, at Sacramento, Judge Van Fleet was united in marriage with Miss Isabella Carey, daughter of R. S. Carey, an old and influential citizen of that place, of Democratic politics. Mrs. Van Fleet died at Sacramento in February, 1878, leaving an infant son.

In January, 1887, Judge Van Fleet married Elizabeth, the second daughter of the late Clark W. Crocker, a brother of Charles Crocker, and one of the firm of Sisson, Wallace & Crocker. By this marriage Judge Van Fleet has three sons and a daughter.

W. B. WALLACE.

W. B. Wallace was born in Platte City, Missouri, on May 1, 1849. His father was a physician, a native of Virginia, and with his family came to California, crossing the plains in the year of his son's birth. They first settled at Placerville in the fall of that year. The father died there in 1850, and in 1859 the mother also died. The son, a boy of ten years, was then thrown on his own resources to make his way through the world. Fortunately he inherited a tendency to intellectual pursuits and the society of good people; and to heredity much more than to environment he owes his success. He had to conquer environment, or, rather, to create a new and wholesome environment out of variegated surroundings.

His early years were passed in the mining regions. He received a common school education with some special training in the higher branches. At the age of eighteen he commenced teaching school, which pursuit he followed for some years. During this period he devoted his spare time to reading law. In 1875 he removed to Tulare county, where he has since resided. He was admitted to the bar and commenced the practice of law in Visalia, in 1881. During the years 1885 and 1886 he was district attorney of that county. He built up a successful and quite an extensive practice in the State and Federal Courts and the United States land office of his district. He has conducted many cases in the Circuit Court, and has appeared in the Circuit Court of Appeals and the Supreme Court of the United States.

In 1898 Judge Wallace was elected Superior Judge of Tulare county for a term of six years.

His family consists of a wife and three children.

J. M. WALLING.

J. M. Walling, a resident of Nevada City, California, was born in 1841, in Scott county, Iowa, where he resided until he was twenty years of age. He received only a limited education (being an orphan from an early age) in the district schools. Upon the breaking out of the Rebellion, he enlisted for three years as a private in Company A, Eighth Iowa Infantry, the company being organized in Clinton county, Iowa. On January 1st, 1864, he re-enlisted with his regiment, as a veteran volunteer. Thereafter he was commissioned as first lieutenant, and was finally discharged on December 30th, 1865, and returned to his home. He participated in all actions where his commands were engaged. He was captured at the battle of Shiloh in 1862, and detained a prisoner for more than six months, after which he was paroled, then exchanged and returned to duty in the army. He served under Grant, Sherman and Canby. On March 1st, 1866, he sailed from New York for California, where he arrived on the 23d of the month, and joined his father, L. A. Walling, at Rough and Ready, Nevada county. He resided at Rough and Ready until 1872, when, having been elected county recorder, he removed to Nevada City. It was at this time that he commenced the study of the law. During the years 1874, 1875 and a portion of 1876, he was justice of the peace for Nevada City. In June, 1876, he was duly admitted to the bar by the Supreme Court of California, and at once commenced practice. In 1884 he was elected Superior Judge of Nevada county, and served one term of six years, voluntarily returning to the practice at the end of the term.

Judge Walling is a member of the G. A. R., and a Past Department Commander of the Department of California and Nevada. He is a thorough temperance man, and filled the office of Grand Chief Templar, of California, for three terms. In this connection the following from the *Merced Weekly* will be appropriate:

"Sacramento is to be congratulated on even the temporary assignment of Judge Walling to that court, if the following from the telegraphic news of one day last week correctly reports a proceeding had there:

"'SACRAMENTO, June 19.

"'Judge J. M. Walling, who is presiding in Judge Armstrong's court, certainly has the courage of his convictions. He is a temperance man, an advocate of temperance principles, and he don't care who knows it. Yesterday a German came up before him as an applicant for citizenship. The man admitted that he did not know who is Governor of California, and in reply to a query as to who is President, replied:

"'Vell, I dink it is Harrison."

"Do you know who makes our laws?" inquired the Judge.

"I dinks it vas State officers," was the reply

"What is your business?"

"I am a saloon-keeper."

"Do you belong to an organization known as the League of Freedom?"

"Yes."

"Is it not one of the objects of that organization to fight all laws distasteful to saloonkeepers?"

"Yes, if the laws do not suit 'em," was the reply.

"Well," said the Judge, "I guess I will not admit you to citizenship." And he didn't.

"We do not know where Judge Walling hails from,—what county has honored itself and the State by placing him on the bench,—neither do we know what political party he affiliates with, but we do know that he is made of the timber that we would like to see worked up to the bench of California, wherever it is to be found. When a man openly boasts of his membership in an organization whose object is the nullification of all laws enacted for the preservation of good order and public morals, that man is not fit to be a citizen and exercise the high and dignified right of suffrage. If we had more Wallings on the bench, and more safeguards thrown around the sacred right of American citizenship, it would not be found so hard to enforce good and wholesome laws."

For many years Judge Walling has been one of the board of trustees of the Good Templars' Home for Orphans, at Vallejo. He is also connected with the I. O. O. F., O. C. F., A. L. of H., and other fraternal societies. He was married on May 12th, 1872, to Miss C. E. Snell, a native daughter of California. They have six children living, four boys and two girls. He is a man of strong principles and a Republican in politics. He has very many warm friends throughout the State. It has been well observed that, "Aside from the credit due him for the able and conscientious fulfillment of every public trust, and for private acts of a worthy nature, he is also entitled to much praise for the efforts he has made to improve his intellectual faculties, and which efforts have fitted him for the forum and the platform." Mining law has received his special attention, both on and off the bench, that industry being dominant in the section where he resides.

T. H. WELLS.

T. H. Wells, the worthy recorder of Santa Monica, came from his native State, Missouri, across the plains to California in 1849. He was one of a company of forty-four and arrived at the mines on main Feather River, November 12, 1849. In 1852 he was elected a member of the assembly from Butte county. He had contracted chills and fever, but his good political fortune suddenly made him a well man. The legislature opened in January, 1853, and Judge Wells has many reminiscences of that day and body. He thinks the legislature at that session was the ablest that ever met in California. He especially remembers the speaker, Hon. Isaac B. Wall, as a talented, careful and scrupulously honest man. Soon after the close of the session the speaker, Wall, was foully murdered, being lassoed and dragged to death. The survivors of that legislative body besides Judge Wells, are Judge Chas. F. Lott, Oroville; Judge Walter Van Dyke, Supreme Court; Judge B. F. Myers, Auburn; and Colonel Chas. C. Thomas, Los Angeles.

Judge Wells was elected to the assembly again for the session of 1855. To go back a little our friend was elected justice of the peace of Ophir township, Butte county, in February, 1852. It transpired that had he not been too modest to vote for himself, his election would have been unanimous.

Judge Wells is a man of considerable humor, and talks very entertainingly of his experiences on the "bench." "I never looked into a law book," he has told us, "with the purpose of becoming lawyer or Judge, until in May, 1852.

"In due time I qualified, as the phrase goes, received my official docket and statutes, mounted my bench, a tri-legged stool, and had the constable proclaim the court duly inaugurated and ready for business, not omitting to shout, 'Let there be peace, good will and order in the village.' There was; my constable had whole bags of *sand!*

"But upon trying to try my first case—a realty action, title to a valuable placer mining claim (which the statutes then permitted Justice's Courts to try), I found that I lacked several points of being *qualified* to act in this judicial forum even. I had formally indulged the hope that one of the parties would call for a jury—illusive hope! Nary a party made any such call, but meekly remarked that it was not a case that any jury could so easily decide without error as could the court. Gee whiz! It at once dawned upon my judicial mind that I, myself, alone, unaided by precedent or experience, would have to say, declare and decree that the valuable mining claim in action was the property of one of the parties, and not the property of the other. But the witnesses testified, the disciples of Blackstone, Kent and Chitty spread their eagles, and submitted the case. Then, in order to appear judicial as well as careful, I 'took the case under advisement' for a week, and then announced and recorded my first judicial guessment. The guess was that plaintiff ought to have the mine, and all its mineral stores. His attorney said it was right and would stand as a judicial guide to other courts of less discernment. The attorney for the defendant

said he guessed that I had decided right; and I replied that his guess exactly corresponded with mine. The sequel: The plaintiff made his fortune, the defendant made—his way out of the country."

Judge Wells was associate justice of the Court of Sessions of Butte county from May, 1852, to the close of that year, and from October 1, 1853, to October 1, 1854.

In 1854 he was deputy county clerk and justice of the peace, and also public administrator. Not the least engrossing of his cares at this time was his devotion to Blackstone. In June, 1855, he was admitted to the bar after examination in open court by Hon. Wm. P. Daingerfield, District Judge.

In 1855 he was the nominee of the Democratic party for district attorney in Butte, and was defeated by J. J. Klein, Know Nothing, by thirty-nine votes.

In 1857 he was elected as County Judge and served out the term of four years. He was reversed twice by the Supreme Court, and freely declares that he would probably have been reversed oftener if more appeals had been taken.

In 1861 he was defeated for the same office.

In May, 1864 he located at Carson City, Nevada Territory. Nevada was admitted into the Union in the following October, and Judge Wells was private secretary to the first Governor, Henry G. Blasdel, during his two terms, which extended down to June 8, 1871.

The Judge some sixteen years later was private secretary to Governor C. C. Stevenson, of Nevada, for between two and three years. Governor Stevenson then appointed him District Judge, which office he held nearly two years. He also was once elected a presidential elector in Nevada, and once a member of the Board of Regents of the State University, and became president of the board.

Judge Wells left Nevada on account of the failing health of his wife, coming back to California, and settling at Santa Monica in July, 1892. Mrs. Wells died there on June 22, 1899, of heart disease.

Judge Wells, in the evening of his life, is a cheery-hearted man and a companionable friend, being at once witty and philosophical. He has arranged his great volume of California and Nevada reminiscences for publication. Just as we write this of him (on the 25th of July, 1900), his old friend, that good man, Henry G. Blasdel, Nevada's first Governor, has closed at Oakland, Cal., his life of seventy-five years. We have a melancholy interest in speaking his honored name right here. A year ago, Governor Blasdel, on looking at a copy of our "Eloquence of the Far West, No. 1—The Masterpieces of E. D. Baker," remarked, "I like to encourage a man for work of this kind."

WALDO M. YORK.

Waldo M. York, a Judge of the Superior Court of Los Angeles county, was born in the state of Maine, in 1846. He was the only son of David P. York, a thrifty farmer of Dixmont, in Penobscot county. His mother's maiden name was Sarah Vinal. His grandfather York was a Baptist minister, and his grandfather Vinal was a sea captain. Two of his mother's brothers became eminent in their professions, one as a doctor in Philadelphia, and the other as a Judge in Connecticut. Another of his mother's brothers was distinguished in the legislature of the state of Maine, and for more than forty years was a respected public servant. His mother died in January, 1890, and his father died six years later. There was but one other child of the marriage, a daughter, the wife of Albert Mudgett, who now resides with her husband in Dixmont, Maine.

Judge York is a giant in physical stature, being about six feet three inches in height, and weighing about two hundred and thirty pounds. But from his infancy until he was about fourten years of age, it is said that his health was not good, and that his development was slow. From that time he developed rapidly both physically and mentally. His careful and temperate life is no doubt the cause of his present physical health. He was educated in the public schools and in private schools, and at the age of seventeen years passed a successful examination for a certificate to teach in the public schools. From that time until he was twenty-two years of age he was occupied in teaching, working upon his father's farm and attending private schools. At the age of twenty he was principal of a high school. At the age of twenty-two he was admitted to the bar in the Supreme Court of Maine, and immediately commenced the practice.

In the spring of 1871, when twenty-five years of age, he removed to Seattle, in the then territory of Washington, where he opened an office for the practice of the law. Here he was received with very general favor. His quiet manner and kind and courteous tempera-

ment, his studious habits and clean life, and his earnest presence, attracted friends and clients on every hand. Endowed with fine judgment, and willing to bide his time, his novitiate was nevertheless exceptionally short, and he soon found himself before the general eye a pillar in a new commonwealth. In 1872, when twenty-six years of age, and after a residence of only one year at Seattle, he was elected Judge of the Probate Court of King county, of which Seattle was the county seat. This office he held for two terms, when he resigned it to enter into the practice of law in San Francisco.

While at Seattle he married the eldest daughter of Rev. George F. Whitworth, D. D., a prominent Presbyterian divine of Washington territory. The Judge evidently had a strong faith in the Whitworth family, for, on arriving at San Francisco, he entered into a law partnership with his wife's worthy brother, John M. Whitworth. Referring to his services on the bench at Seattle, the writer has seen opinions of some of the leading men of that city with reference to the manner in which he discharged the duties of that office. Ex-Chief Justice Jacobs, now one of the Judges of the Superior Court at Seattle, said of Judge York that he was a sound lawyer and an excellent Judge, and that he earned the reputation of being one of the best Probate Judges that that county had ever had. Ex-Chief Justice Burke declared that Judge York made an excellent Judge, giving universal satisfaction. "I remember," he said, "hearing it very generally remarked when he left, that had he remained, the people would willingly have re-elected him to the office of Probate Judge as long as he wished to have that position." Hon. A. A. Denney, ex-member of congress, affirmed that Judge York filled the position of Judge of Probate with credit to himself and to the entire satisfaction of the people, and that his character, both public and private, was absolutely unblemished. The Hon. W. H. White also bore testimony to his high standing as a Judge and his worth as a man.

Judge York practiced his profession in San Francisco for twelve years. The firm of York & Whitworth, while he was a member of it, was engaged in some of the most important litigation in the State of California. One case in which Judge York was engaged, and in which he succeeded in obtaining a judgment for clients, is said to have involved property worth more than a million dollars. Several other cases in which he was one of the leading counsel involved hundreds of thousands of dollars. While practicing his profession in San Francisco, Judge York resided at Berkeley, where he became financially interested, and in which he now has large land holdings. He has always been interested in municipal government, and took an especial interest in the government of Berkeley. He served four years as attorney for that municipality. He wrote many articles for local newspapers on topics of municipal reform. He also wrote and published many articles pertaining to the laws of the State and national politics. He took an especial interest in the Indian question, and, in an essay published in 1877, declared that the laws establishing and maintaining Indian reservations were wrong; that the Indians should be treated as citizens; and that they should be held amenable to our laws the same as any other people. After coming to this conclusion, he wrote: "To be citizens does not necessarily imply that they should have the right to vote, although many people in the United States no better than they and no more intelligent than they, enjoy or abuse that right. * * * Our popular objection to such a course is that the Indians are not sufficiently intelligent to take care of themselves, and would suffer for food and clothes if required to rely upon themselves. It is true they are not, as a class, intelligent, in the commonly accepted meaning of the term; but they have taken care of themselves, and less destitution existed among them before their acquaintance with the whites than with the same number of white people. Since their connection with the whites they have suffered more for the necessaries of life than before. They raised corn, in very early times, and not only supported thmeselves, but assisted in supporting the whites." Among numerous citations of eminent authority for his positon, Judge York quoted from a speech delivered in the house of representatives of the United States by John C. Calhoun in 1820.

The following article from his pen was published during the sand lot excitement in San Francisco:

"DENNIS KEARNEY.

"This name, which to hundreds of thousands of people has become exceedingly familiar, is that of a man who but a few months ago was entirely unknown to fame. Now could his brother draymen say:

"'Ye gods, it doth amaze me,
A man of such a feeble temper should
So get the start of the majestic world,
And bear the palm alone.'

Waldo M. York

He is said to have been in San Francisco but a short time, and yet commands a vast number of her citizens as absolutely as though he were their hereditary dictator. His ideas are the most absurd, and yet thousands listen to him with marvelous appreciation. It is well for him that he sprang from the ranks of the draymen, for if he had been an individual of any note, his doctrines would have disgusted those who now admire. For a foreigner, resident in San Francisco, to talk of sending military companies to Alameda county to elect a candidate for senator is such an assumption that, without further evidence, we could believe the speaker to be a lunatic or a fool. Though we do not record ourselves in favor of the 'Incendiary bill,' we do claim that the public have and should have the right to prevent public incendiary utterances. Freedom of speech does not mean freedom to incite evil-disposed people to violate the laws, and he who is prevented from so doing has no more right to complain than he who is prevented from cutting another man's throat. Kearney cannot long hold his position in the confidence, esteem and admiration of the workingmen. The fallacy of his doctrines—doctrines which would make a monarchy of a republic, a thing more to be deplored by the workingmen than all things else—must soon appear to them, and then his ephemeral power will fade quickly away.

"The course he has taken may nevertheless be a benefit in one sense to the workingmen. It will teach monopolists their insecurity, and the government that the Chinese element is antagonistic to free institutions. Successive demonstrations of the people in opposition to the powers of the land have gradually transformed England from a monarchy to a government nearly republican in form. Such demonstrations make their footprints on the pages of history, and while we now condemn Dennis Kearney and call him a fanatic, the time may come when we can point to influences of great value to the nation—outgrowths of his wild, disorderly acts. There is, however, no necessity in the present enlightened condition of our country for such demonstrations. The ballot is an ample remedy for all the evils complained of, and the locking up of nervous capital through fear of insurrection is of more damage to laboring men than all they can hope to win by incendiary agitation."

About 1887 or 1888, Charles A. Shurtleff, Esq., was added to the firm of York & Whitworth, and thereafter the firm name was York, Whitworth & Shurtleff. The old sign of that firm can still be seen at 120 Sutter street, in San Francisco.

Becoming conscious of the fact that he had overworked, and that a change of climate and of work would be beneficial to him, Judge York removed to Los Angeles, in 1889. Here he immediately acquired a good law practice. In the fall of 1890 Hon. James McLachlan was elected district attorney of Los Angeles county. The county was at that time engaged in very important litigation. It was the commendable policy of Mr. McLachlan to so organize his office that no assistance would be required in the management of the cases in which the county was involved; and, among others whom he selected for deputies in that office, in the line of that policy, he offered the position of chief deputy to Judge York, although at that time there was no personal acquaintance between them. After some consideration, Judge York made provision for assistance in his private practice, accepted the position and entered upon the discharge of the duties of that office. In that position he successfully conducted the civil litigation of the county, and in several cases won distinction by the ability with which he conducted them. Among these cases might be mentioned the celebrated railroad tax cases, in which he successfully contended that the assessment of railroad property by the State board of equalization was legal, notwithstanding a franchise was assessed with other property at a gross sum, and that the franchise assessed was a State, and not a United States franchise; the bank tax cases; and the Tahiti orange tree case, where he successfully contended that a shipload of orange trees, infested with scale, imported from the Tahiti Islands, was a public nuisance, and secured an order of court for their destruction.

After two years of service in the office of the district attorney, he entered into a partnership with Mr. McLachlan under the firm name of McLachlan & York. This firm established a large practice. In addition to many important cases conducted for their private clientage, they represented several public officials. They were attorneys for the State bank commissioners for Southern California, for the public administrator of Los Angeles county, for the Whittier State School, besides representing the county treasurer in a suit which went through the Supreme Court, and defending the superintendent of the County Hospital and the horticultural commissioner, in efforts made by dissatisfied parties to obtain their removal from office.

During the year 1893, while the firm of McLachlan & York was engaged in business in Los Angeles, the Hon. W. P. Wade, one of the Judges of the Superior Court of Los Angeles county, died. On the first of January following, Governor Markham appointed Judge York to fill the vacancy. Although this ap-

pointment was unexpected, it gave general satisfaction to the members of the bar and the people. In the fall of 1894, in the Republican convention, Judge York received exceptional honors, being the only candidate nominated for Judge on the first ballot, there being eight candidates in the field and two Judges to be nominated. Although running against a lawyer of great learning and ability who had the nominations of both the Democratic and Populist parties, Judge York received a popular majority at the polls of about thirty-five hundred votes. The term to which Judge York was elected was for six years, commencing January 1, 1895.

As a Judge, Judge York has been commended on all hands. He has shown an excellent judicial temperament. He has been fair, patient, deliberate and courteous. Yet he maintains excellent order in his court room and has been highly respected by the bar.

His memory of testimony is unusually clear and his conception of the law applicable to cases is quick and usually unerring. His decisions are ably written and he has shown an excellent faculty of concentration, making his opinions short and to the point. He has tried many cases of great importance, including the case of Vineland Irrigation District vs. Azusa Water Company et al., the trial of which lasted about two months, and in which his decision was affirmed by the Supreme Court. Several other cases involving water rights of immense value have been tried before him, and in many of them his decisions have been accepted as final without appeal.

Judge York has been frequently commended by the press and people for his care and discrimination in the examination of applicants for naturalization. Applicants for naturalization have been repeatedly turned away whom he believed, by reason of ignorance or otherwise, to cherish no intelligent attachment for our laws and institutions. In a magazine article published by him, December 9, 1895, he states very clearly and tersely his views with respect to the rights of foreigners to become naturalized as citizens of the United States. The Los Angeles *Times* of November 5, 1894, observed as follows concerning this matter of naturalization: "Many applicants have not been able to say whether this is a monarchy or a republic, and many have declared the President to be the government itself. Judge York is known to have been always patient with these applicants, examining them carefully, and, after satisfying himself that the questions were understood by them, and that they were wholly uninformed as to our system of government, has kindly but firmly refused to admit them to citizenship."

The Judge is an excellent public speaker. He is impressive from his easy manner, his distinct enunciation and honest and lucid statement. Among his orations which have been published in full by the press were those on Independence Day, 1878, at Redwood City; on a like occasion at San Miguel, in 1887, and on Memorial Day at Ontario, in 1894. As illustrative of his style of composition, we quote his peroration in his Fourth of July address at San Miguel:

"That flag is inseparable from this day. It is the materialization of a sentiment. The stars symbolize the union of the states, while the stripes symbolize the grand old thirteen colonies that declared our independence. It is symbolical of union, perseverance, vigilance, honor and justice. It was first unfurled by Washington at Saratoga. It waved over our patriot armies in the dark hours of the Revolution. The bare-footed soldier at Valley Forge endured his privations and sufferings with greater fortitude as he looked upon that flag floating in the harsh winter winds; as, in his imagination, he saw a great nation ruled by the people, over whose public institutions, whose armies and navies, that flag would triumphantly float; as he thought of the honor and love with which a great people would cherish that flag and honor its defenders; as he thought of the immunity from tyranny of a great people under its protecting folds. In the storm of battle how oft' has that flag inspired our patriot troops! How often have they sworn to die rather than surrender it! How many brave men have died that that flag might float! What scenes of heroism has that flag not witnessed! Alas! What scenes of suffering and barbarity! Trailed in the dust at Wyoming, and Cherry Valley, while its defenders lay weltering in their blood, it floated in triumph at Stony Point, at King's Mountain, at Cow Pens, and at Yorktown. In the wars that have succeeded the Revolution, it has found equally brave defenders. They, too, have bourne it through shot and shell; the gloom of defeat and exultations of victory have been theirs. It has floated on every sea and in every commercial port of the globe. All nations respect it, and under its folds our commerce is safe.

"Under that flag our nation has grown great and prosperous. Under that flag literature and the arts have flourished, and inventive genius has found protection and appreciation.

"It floats over a greater inland commerce than any flag ever unfurled. It is the banner of human progress, of human energy, of liberal religion, of free schools, of free speech, and of a free press.

"May this day ever be remembered by a grateful people, and may that flag on each suc-

ceeding anniversary of our Declaration of Independence, until time shall be no more, float over this broad land, loved and cherished by its increasing millions of freemen, and loved and cherished by the people all over the world, as the emblem of permanent liberty to man."

In his memorial address at Ontario, Judge York pays the following tribute to General Grant:

"Hannibal fought for revenge. Julius Cæsar fought for extension of Roman territory and dominion. Bonaparte fought for military renown. Enthused by the spirit of liberty in this country was reared a military commander who fought for his country alone. 'Let us have peace,' was the spontaneous sentiment of his heart. He won peace on fields of battle amid the roar of artillery, the screaming of bursting shells and the groans of the wounded and dying. His armies triumphed over the armies of Lee, and then his great soul triumphed over their hearts. Future historians must say that he who led the Union armies to victory was the greatest general of the world. Yet, though he had a military education, he was called from the pursuits of peace, his heart revolted against the necessary cruelties of war, and he was satisfied to live the life of an obscure American citizen.

"Hannibal died by his own hand, an exile from his native country. Julius Cæsar was assassinated by conspirators, professedly because he was a danger to the state. Bonaparte died in exile, hated by the world. Grant died with the hearts of his countrymen by his bedside, with the firm friendship of those against whom he fought, and the whole world sorrowed. On his deathbed he wrote that he would die happy if he could but know that there was complete unity of the country. God bless his noble soul, and may he have an eternal round of perfect happiness in heaven."

Our jurist has always loved the muse, and the press has often published his pleasing verse. Among these are "The Dedication of a Virgin Valley," published in 1886; "Maine in California," read at the eleventh annual reunion of the State of Maine Association at Oakland, California, on May 5, 1888; "The Banyan Tree at Avalon," 1891; "The Victorious Banner," 1893; "The Spring in the Hillside," 1894; "Eternal Life," 1895.

Some of the most discriminating and able men of California, and many public journals, have long associated Judge York with the office of United States Senator. During the long contest over this high office in 1898-99, when the term of the Hon. Stephen M. White expired, Judge York was highly recommended to fill the vacancy. The *Los Angeles Graphic, Pasadena News, Pomona Times, San Miguel Messenger,* and several other papers declared unequivocally in his favor. But the Judge would not consent to enter into any struggle for that positon, howmuchsoever he might desire the distinction, and would have desired to engage in the study of the great problems of government now before the country. The friends of Judge York predict that he will have further public honors, but his retiring disposition and his evident satisfaction with the work in which he is now engaged, render his advancement problematical. He has, however, shown himself equal to any work which he has undertaken.

Judge York resides in Pasadena. His family consists of his wife and two children, a son and daughter. His daughter, M. Jessie York, is an elocutionist of exceptional ability, and his son, Mr. John M. York, is in the practice of the law in Los Angeles.

In November, 1900, the Judge was again elected to the Superior bench for a full term. This will expire in January, 1907.

B. T. WILLIAMS.

B. T. Williams, Judge of the Superior Court of the county of Ventura, was born at Mt. Vernon, Missouri, December 25, 1850. His father, Dr. J. S. Williams, a native of Kentucky, was an eminent physician. His grandfather, Thomas Williams, was president of

what is now the University of Kentucky. The ancestors of the family settled in North Carolina at a period so early that all accounts of them are lost. One of them, a relative of Daniel Boone, went to Kentucky with that pioneer.

The Judge's mother, whose maiden name was Amanda Downing, was of the well-known Downing family of Fauquier county, Virginia,

whose ancestors located in that state at the time of the first settlement at Jamestown, in 1607. Her father, H. H. Downing, emigrated to Missouri in the early history of that state, and was a large landowner and planter.

The Judge's parents came to California in 1853, settling in Sonoma county, and there he grew to the years of maturity. He began the study of law in the office of the late Judge William Ross. He was admitted to the bar in 1871, and located at San Buenaventura, where he engaged in the practice of his profession. Upon the organization of the county he was elected district attorney, and served in that capacity acceptably for four years. Entering then into partnership with his brother, the late W. T. Williams, he continued in that relation with him until 1884, when he was elected to his present position of Superior Judge. He is now serving his third term.

In his social relations, Judge Williams is a member of the Masonic lodges, of the K. of P., and the B. P. O. E. He was married in 1878 to Miss Irene Parsons, and now has five children, all born in San Buenaventura.

Judge Benjamin Tully Williams is a representative American gentleman, good-tempered, affable, easily approached and destitute of pride or ostentation. He has a fine legal mind, is a ready, easy speaker, makes his rulings promptly and usually gives entire satisfaction. By showing his honest desire strictly to administer exact justice, both when district attorney and later as Judge, his conduct has been such as to command the respect of the bar, as well as of the best citizens of both parties.

William Thomas Williams, the brother above named of Judge Williams, was born in Missouri, and also came with his parents to California in 1853. He began the practice of law in Sonoma county in 1866. He was district attorney of Santa Barbara county before Ventura county was created. Removing to Los Angeles in 1885, he practiced there until his death, which occurred in 1900. In 1896-97 he was deputy district attorney of Los Angeles county under Hon. John A. Donnell.

WILLIAM A. CHENEY.

William A. Cheney, an experienced public man of California, was born in Boston, Mass., February 18, 1848. He received an academic education, and has been a student all through his life. At the age of nineteen, A. D. 1867, he came to this State by way of Panama, and went to Plumas county. He was admitted to practice by the courts of Plumas county in 1878, and in the same year was elected County Judge of Plumas, holding to the opening of 1880, when the court passed out of existence with the old constitution. He was in the legislature at the first session under the new constitution, as State senator for Plumas, Butte and Lassen counties. He served at the sessions of 1880 and 1881, and the extra session of the latter year, an important period, when the laws were being adapted to the new constitution. In 1880 he was admitted to the bar by the State Supreme Court. During his senatorial period, without without residing at Sacramento, he had a professional association with Hon. Creed Haymond, of that city.

Judge Cheney removed to Los Angeles in 1882. He was soon elected a member of the board of education of that city, and served the two years' term, 1883-84. In the fall of 1883 he was elected, on the Republican ticket, a judge of the Superior Court of Los Angeles county for a full term of six years, which he served. He resumed law practice in January, 1891.

In the "History of Los Angeles County," (1889) there is a notice of Judge Cheney, from which we take the following well-considered passage:

"In his administration of the criminal law, for which department he was selected by the judgment of his associate judges, and for which his deep moral sense specially qualified him, an earnest desire to temper the severity of the sentence with such measure of mercy as he thinks benefits the individual case, is never absent. While inflicting the necessary penalty of transgression, he seeks to foster and encourage whatever impulse toward virtue may still linger in the heart of the criminal. He habitually recognizes that in the violation of law there may be hidden the germs of redeemable manhood.

"No biographical sketch of Judge Cheney would be complete without a reference to his ability as an orator, so often attested in his criminal practice at the bar, and to his achievements on the platform on great occasions, which place him in the front rank of public speakers."

The Judge married Miss Annie E. Skinner, of New Haven, Connecticut, in 1871. They have one son, Harvey D. Cheney, who is also a member of the bar.

M. H. HYLAND.

M. H. Hyland, one of the Judges of the Superior Court of Santa Clara county, was born in Massachusetts in 1851. He has been a resident of San Jose since about 1870. He served

one term as deputy in the county clerk's office there. He prepared himself for the bar in that city, and passed the examination before the Supreme Court in 1885. He practiced in San Jose until 1896, when he was elected a Judge of the Superior Court. He is represented by those who know him well as being a man of broad mind, kindly nature and fine judicial temperament, entirely worthy of a place among the distinguished men who have

dignified the bar and the bench of Santa Clara county. At the bar he was always characterized by industry and ability, and he has made an excellent record on the bench. He is firm in his rulings, impartial and conscientious in his judgments. He is of very fine physiognomy, telling of a frank nature and correct habitudes, and clear reflection. His term as Superior Judge runs to the first week in 1903.

S. C. DENSON.

Samuel C. Denson was born near Quincy, Adams county, Illinois, September 23, 1839. He belongs to an old American family, and his forefathers were found

"Where once the embattled farmers stood
And fired the shot heard round the world."

He was educated in the district school and at Abingdon College. He commenced the study of law at Quincy, but before completing his course he came, in 1860, across the plains, behind an oxteam. Upon arriving in the State, he drifted into Butte county, where for a time he engaged in mining, about sixteen miles from Oroville. He resumed law study at Oroville, borrowing books from Joseph E. N. Lewis, then a prominent member of the bar of that county, who died at Oroville, June 26th, 1869. He read at night while prosecuting his mining labors during the day. Being offered the situation of teacher of the village school at a little place called Wyandotte, he accepted it, and for eight months taught school, giving all of his leisure hours to the reading of his law-books and going to Oroville on Saturdays for instruction and to exchange books. He prosecuted his studies as best he could until 1863, when he was admitted to the bar. In March, 1864, he went to the Territory of Nevada, locating at Carson City. He was examined and admitted to practice in the Supreme Court of that Territory. On the organization of the State government in the fall of 1864, he was elected a member of the first State legislature from Ormsby county. He practiced law, first in partnership with Judge Thomas Wells, and afterwards with Thomas E. Hayden, and was engaged in much of the important litigation of that State. In 1866 he was elected district attorney of Ormsby county, and was re-elected at the November election, of 1868.

Being re-elected district attorney, he resigned the office in December, 1868, and removed to Sacramento, in this State. There he formed a partnership with Hon. H. O. Beatty, who had been a Supreme Judge of Nevada, as also his son, Hon. William H. Beatty, now Chief Justice of our Supreme Court. The firm continued until 1875, when Judge Denson was nominated by the Republican party and elected Judge of the Sixth judicial district, composed of the counties of Sacramento and Yolo.

When the new constitution went into effect, and at the Republican county convention in 1879, he was unanimously tendered the nomination for Superior Judge, and was elected to that office by a large majority. As Superior Judge he presided in many important cases. One that attracted the attention of the State was that of Troy Dye and Edward Anderson, charged wih the murder of Aaron M. Tullis. Dye was a prominent citizen of Sacramento county, and at that time held the office of public administrator. The evidence in the case showed that in order to secure the commissions as public administrator in administering on the estate of Tullis, who was a heavy land-owner in the county, he had entered into a conspiracy with Anderson and Tom Lawton to murder Tullis. Tullis owned a large orchard on Grand Island. On the evening of July 30, 1878, Lawton and Anderson left Sacramento in a rowboat for Grand Island, and there killed Tullis. The detec-

tives fastened the crime on the parties, and arrested Dye and Anderson, but Lawton made his escape. Shortly after the arrest, Dye and Anderson confessed fully the details of the crime. The peculiar motive for the crime—that of obtaining the commissions as public administrator—together with the prominence of Dye, attracted universal attention. These cases were defended by Colonel Creed Haymond, but the defendants were convicted and hanged.

During his term of office as District Judge, there was a large amount of litigation involving the titles of swamp lands, the consideration of the law on the subject of reclamation districts, assessments, etc., and he had to do with most of the important cases on that subject in this State. Being located at the seat of government, all of the important State litigation, which has arisen during his term of office, came before him for decision.

In the fall of 1882, Judge Denson and Superior Judge John Hunt, of San Francisco, were the Republican candidates for Justices of the Supreme Court, but the State went strongly Democratic that year, and the nominees of that party were all elected.

Judge Denson removed to San Francisco in 1889. In 1894 he and ex-Supreme Judge John J. DeHaven, became associated (Denson & DeHaven), and remained together for three years, when Judge DeHaven entered upon the office of United States District Judge. Judge Denson, his son, H. B. Denson, and C. H. Oatman, then comprised a new firm (Denson, Oatman & Denson). After a year or so, Bert Schlesinger took Mr. Oatman's place, and the firm continues as Denson, Schlesinger & Denson.

JAMES M. MANNON.

James M. Mannon, Judge of the Superior Court of Mendocino county, was born in Brown county, Ohio, and received his education in the common schools of that State. He was graduated from the Southwest Normal School at Lebanon, and after a few years passed in teaching school, he immigrated to

California. He arrived in San Luis Obispo county in 1873, and engaged in stockraising and various other pusuits, until failing health compelled him to withdraw from active physical labor. He then began the study of law, and in 1881 was admitted to the bar. Shortly thereafter he removed to Ukiah.

In 1875 he was married to Miss Mattie Clark of Windsor, Sonoma county, and two living sons are the issue of the marriage—Charles M. and J. Milton. The former was graduated with honor from Stanford University in 1898, and from Hastings College of the Law in 1900. He is now in active practice in San Francisco. J. Milton Mannon, the younger son, was graduated from the University of California in the class of '99, and is now a middle-year student in the Hastings College of the Law.

Judge Mannon rose rapidly, not alone in his profession, but in the confidence of the people, and the years 1887-88 saw him occupying the position of district attorney, a place he filled with distinguished ability. When his term ended he resumed the practice of the law, and soon attained the position of a leader at the bar. Among his clients were the large corporations of the State and the prominent business men of the county.

In 1896 he was the Republican candidate for Judge of the Superior Court, and in a county that was strongly Democratic he was elected by a substantial majority. His decisions are regarded as having always been just and fair, and the attorneys of all parties have never yet expressed dissatisfaction at his rulings. The Judge possesses, in an eminent degree, the judicial mind. He is tolerant and patient under the most trying circumstances, and has the entire confidence of the people of Mendocino county.

His ambition in life has been the education of his sons, who are very bright young men. They have been given every advantage, and are now entering upon careers which promise to be distinguished.

We have aimed to present the members of the bench in alphabetical order. Here and there this arrangement has been departed from to bring a portrait in apposition with the sketch of the same person. And there are some sketches which were put in form too late for the usual disposition. These appear in the few pages that precede this note.

EDITOR.

SENIORS OF THE COLLECTIVE BAR

SENIORS CENTER
COLLECTIVE BAR

SENIORS *of the* COLLECTIVE BAR

The great array of attorneys who face the sunrise of a new century, and who will now receive our attention, we will not attempt to classify according to degrees of ability or merit. Of this large body there are recognized able men in every city, and in some of the smaller centers. These, as a rule, do not lay claim to superior endowments or acquirements, and really are not on higher ground than some others whom the light of reputation has not yet brought into plain view. And ever and anon the profession is heard calling to some occupant of a lowly seat, "Friend go up higher." We shall present the profession in two companies, divided only as seniors and juniors, drawing the line at the year 1860. Those who were born before and in that year we place in the first company, and all the rest in the second. As a further assurance against anything like inattentive discrimination, both companies will be brought into alphabetical line, excepting any individual member of either company that may have to be written of too late for such assignment. Of course we are alive to the fact that in our second band are a goodly number of practitioners of larger experience, more mature minds, and more natural ability than many whom this enforced arrangement has thrown into the first collection. The reader will consider and conclude for himself.

FREDERICK ADAMS.

This gentleman is a native of Crawford county, Tennessee. Both of his grandfathers were Revolutionary soldiers, and both served in the War of 1812. His father, long before he reached man's estate, fought in wars with the Indians. At the age of seventeen, while acting as hospital steward, he was shot through the left shoulder. He also took part in the Blackhawk War. In 1835 he settled at St. Louis, Mo., in the practice of law, and there held the offices of Circuit Judge and Commissioner of Public Works.

Judge Adams, our subject, in 1844, when a mere boy, went to the Kansas Indian territory as interpreter to the commission sent out by the government to treat with the Indians, and remained with the commission for two years. In 1846 he joined the Second Indiana Volunteers at Memphis, Tenn., as a drummer, and went with the regiment to Mexico. He was wounded in a fight with Mexican guerrillas near Fort Brown, and languished in a hospital at San Antonio for over four months. Upon recovery he was transferred to the Second Texas Volunteers, and, in a campaign against the Comanches, was in the battles of Big Horse Creek, Wild Horse Creek and Forks of Wild Horse Creek, in all of which the Texans sustained severe losses; and at Silver Springs, where they were defeated.

Returning from this Indian expedition, he was ordered on a detail sent to guard dispatches and supplies for Colonel Donaphan and his regiment, the Second Missouri. He was discharged at El Paso, Texas, November, 1847. Receiving the appointment of government mail carrier between El Paso and Albuquerque, New Mexico, he was in that service from November, 1847, to May, 1848, often meeting hostile bands of the red men, who killed a number of his horses, and from whom he had many close personal calls.

Judge Adams set out for California as early as November, 1848, with Marcy's Battalion. He was discharged in 1849, at Los Angeles. The next five or six years were passed in the gold mines of El Dorado, and Siskiyou counties. The opening of the Rogue River Indian war in 1855 found him again in the government ranks, and he served through that conflict as a scout. He followed the flag through later Indian campaigns—against the Modocs in 1856, and the Pit River Indians in the same year.

Passing over the period from 1861 to 1868,

which was spent in Oregon and Idaho, a portion of it at the bar, Judge Adams took up his residence in the latter year at Santa Cruz, Cal., where he followed law practice until 1880. Subsequent periods at the bar were passed—in San Luis Obispo county, 1880-1891; in San Francisco and Oakland, 1891-1898. Since the latter year he has been following the profession in El Dorado county, having his home and office at Placerville.

Judge Adams has held many places of public trust. In 1855 he was deputy sheriff of Siskiyou county. In 1864 he was tax collector and county treasurer of Grant county, Oregon. He was assemblyman from that county in 1866, and County Judge of Grant county in 1867.

In 1873 and 1874 he was city attorney of Santa Cruz, Cal.; and in 1884 was city attorney of San Luis Obispo, Cal.

Judge Adams is a Knight Templar in the Masonic Order, and a member of the A. O. U. W. In 1890 he was Grand Master of the last named order.

He married Miss Eliza L. Miller in Yreka, and has two daughters, Mrs. E. R. Tutt, of Oakland, and Mrs. H. A. Barkelew, of Fresno.

His politics are Republican, for which cause he has several times canvassed the state, being an effective stump speaker. He was a prominent candidate for the party nomination for Governor before the Republican State convention at Los Angeles in 1896.

A. AIRD ADAIR.

Mr. Adair was born in London, Ontario, on the 25th of August, 1857. In 1882 he was admitted to the bar of Ontario, taking very successfully the examinations for barrister and attorney prescribed by the benchers of the Law Society, and at once entered upon the practice of his profession at Stratford, Ontario. In June, 1887, the University of Toronto conferred upon him the degree of LL. B.; and in the following year upon the organization of the judicial district of Muskoka and Parry Sound, he was appointed by the government of Ontario to the office of clerk of the peace and crown attorney of that district. In less than two years thereafter, he was compelled, on account of ill-health, to resign this office, and he removed to Southern California, making Riverside his home. Since January, 1890, he has practiced there in partnership with W. A. Purington, Esq. Ever since the organization of the County of Riverside, the firm of Purington & Adair has been identified with a large part of the legal business transacted in the county, and enjoys the confidence of a large clientage.

WILLIAM H. AIKEN.

William Henry Aiken was born at Middlebury, Vt., October 23, 1843. His father, Judge Charles Aiken, was an eminent lawyer of that state, who removed to California late in life, and after some years' practice at the San Francisco bar, died at the great age of ninety-three.

Mr. Aiken is a college graduate of 1863, and served in the Union army during the Civil War for two years, until its close. He enlisted from Wisconsin. He was afterwards admitted to the bar there, and a year later, in 1867, he removed to San Francisco, where he was associated in law practice with Messrs. James M. Shafter and James M. Seawell (both of whom afterwards became Superior Judges) until 1876. Mr. Aiken then retired to a farm in Santa Cruz county, where he has ever since resided. He is the owner of the largest and most valuable orchard and vineyard in that county. The "Aiken" brands of prunes and table grapes are as well known as any in the State, and are in the highest favor in eastern markets.

Mr. Aiken has been prominent in military circles. He was department commander of the G. A. R. for two terms, and for a like period commander-in-chief of the Army and Navy Republican League. For more than twenty years he has represented his county in the State and county conventions of the Re-

James A. Anderson

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publican party. He is a well-informed man, of interesting personality, an effective public speaker, and has often addressed the masses on behalf of his party, spoken from the lecture platform, and in 1900 canvassed the State in the interest of the fruit-growers as their organizing head. He is married, and his wife evinces as much interest as he in the development of the fruit industries of the State, attending with him social and business meetings of farmers and orchardists, and reading papers of her own composition on vital subjects.

Mr. Aiken is a man of large and strong frame, of excellent habits, and having always enjoyed robust health, promises to attain a great age, if not the long reach his father knew.

K. ALBERY.

K. Albery read law in the offices of Judge H. B. Albery and Horace Wilson, in Columbus, Ohio. He was examined by ex-Supreme Judge Allan G. Thurman, and Hon. George L. Converse, and on their certificate of qualification was, in March, 1865, admitted to practice law in all the courts of record in Ohio. He was prosecuting attorney for Mercer county, Ohio, from January, 1867, to January, 1871. He came to California in February, 1880, and followed prospecting and mining for five years. He commenced the practice of law in Colusa in November, 1886.

Prospecting for precious metals in Shasta county during the summers of 1895 and 1896, Mr. Albery made the discovery that gold ore in a body, as a magnet, will attract refined gold as a predicate, with gravitation deflected, for a distance of three or four miles.

Our subject is a brother of Hon. H. H. Albery, Judge of the Superior Court for Colusa county. In March, 1897, K. Albery located in Willows, Glenn county, where he is now practicing law in partnership with Hon. Ben. F. Geis.

D. E. ALEXANDER.

D. E. Alexander was born in Jackson, Miss., on the 7th day of February, 1845; he resided in his native place until after the gold excitement broke out. His father, B. F. Alexander, caught the gold fever and joined the rush for the golden shores. His family, then consisting of his wife, Caroline W. Alexander, and three children, to-wit, a daughter, since deceased, and two sons, Hon. John K. Alexander, of Salinas City, then a boy of some fourteen years, and D. E. Alexander, the subject of this article, followed him here in the year 1854. They arrived at San Francisco about the 20th day of September on the steamship California, it having taken them three weeks to make the trip from New Orleans here, via Panama. The family immediately took passage on the historic river boat New World, to Sacramento, arriving there the following day.

At that date schools were few in California, but such as they were they were utilized by the senior Alexander, and the children were all sent to school. It was the good fortune of our subject to be placed under the tutorship of Andrew R. Jackson, a self-made man. Mr. Jackson so managed his pupils that they were self-reliant, a qualification which became highly developed in our subject. By reason of this, Mr. Alexander has been able to achieve much. He continued his attendance upon the schools of Sacramento city, graduating with high honors from the Sacramento high school, April 28th, 1866. Prior to his graduation he studied law, and was admitted to the bar in the February following his graduation. His law preceptors were Hon. George R. Moore, Hon. James W. Coffroth, both eminent lawyers, and Hon. John K. Alexander, who now resides at Salinas City, in this State.

Our subject has never been active in politics, but in his young days his party (Democratic) twice nominated him for the office of justice of the peace. The first time he was elected by a small majority, Sacramento city being a

strong Republican citadel. His administration of that office was such that at the expiration of his term he was elected by a large majority over his Republican opponent, and was the only Democrat elected on his ticket.

After the adoption of the new constitution he was a candidate for Superior Judge of the county of Sacramento. While he was not elected, he received a very flattering vote, running far ahead of the balance of his ticket. Since this date he has followed strictly in the line of his chosen profession, with marked success. He moved to San Francisco, in May, 1888, and has continued to practice there to the present time. His offices are located in the Crocker building, and he has a lucrative business.

FISHER AMES.

Fisher Ames, long prominent at the bar of San Francisco, was born in New Hampshire, February 8, 1844. He was educated at Dartmouth College, and was admitted to the bar by the Supreme Court of the state of New York at Albany, May 10, 1870. In the latter year he came to California, and has always

since resided at San Francisco. He has, during his thirty years' practice there, been one of the most active and conspicuous men of the bar. He soon became assistant in the office of Hon. W. C. Burnett, who held the position of city and county attorney for the unusual period of eight years. Mr. Ames is of Democratic politics. He served as a member of the board of education for the years 1876-77; he was the unsuccessful candidate of his party for city and county attorney in November, 1884; in 1882 he was a member of the board of freeholders, which framed one of the three unsuccessful city charters; and for five years, 1887-1892, he was a member of the board of fire commissioners.

Mr. Ames is a man of family. He has no law partner. His practice is large, and he has accumulated a fortune. He has many fine qualities, both as a man and a lawyer.

JAMES A. ANDERSON.

James A. Anderson, one of the sages of the Los Angeles bar, was born in North Carolina in 1826. He is of Scotch-Irish ancestry. His early life was spent in Tennessee. He served four years in the Confederate army, and was captain of a cavalry company in Forrest's Brigade. He was admitted to the bar by the Supreme Court of Tennessee in 1848, and practiced for many years at Memphis, where he was also a Judge of the Circuit Court.

In 1881 Judge Anderson removed to Tucson, Arizona, and practiced there with much success for several years. He came to California, and settled at Los Angeles in 1885. There he practiced at first in partnership with W. F. Fitzgerald and his son, J. A. Anderson, under the firm name of Anderson, Fitzgerald & Anderson. Since the election of W. F. Fitzgerald to the office of attorney-general he has been associated with his three sons, under the style of Anderson & Anderson, his son, C. V. Anderson, conducting an office for the firm at Bakersfield. This firm has been a member of the Los Angeles Chamber of Commerce since 1890.

On July 10, 1899, this distinguished veteran was banqueted by the bar of Los Angeles, the occasion being most interesting and memorable, as will be universally credited. It was in celebration of the fiftieth anniversary of his admission to the bar. The committee in charge were Superior Judge M. T. Allen, ex-Judge John S. Chapman, and Benjamin Goodrich, with Joseph Scott as secretary. Hon. Thomas L. Winder presided at the feast, and Hon. Henry T. Lee was toastmaster. Responses were made to "Our Guest" by Hon. Stephen M. White; to "The Bar" by ex-Supreme Judge Works, and to "The Bench" by Superior Judge Lucien Shaw.

At the age of seventy-five he is still active in the discharge of professional duties, and in sound health.

W. A. ANDERSON.

W. A. Anderson came to California in 1849, being only three years old when his father arrived in Sacramento, July 12th of that year. His residence has continued at the capital up to the present time, with the exception of five years while at college, and one year in the army during the War of the Rebellion. For thirty-three years he has been a member of the Supreme Court bar. When but a youth he was elected county auditor of Sacramento, and took his seat just four days after he had reached his majority.

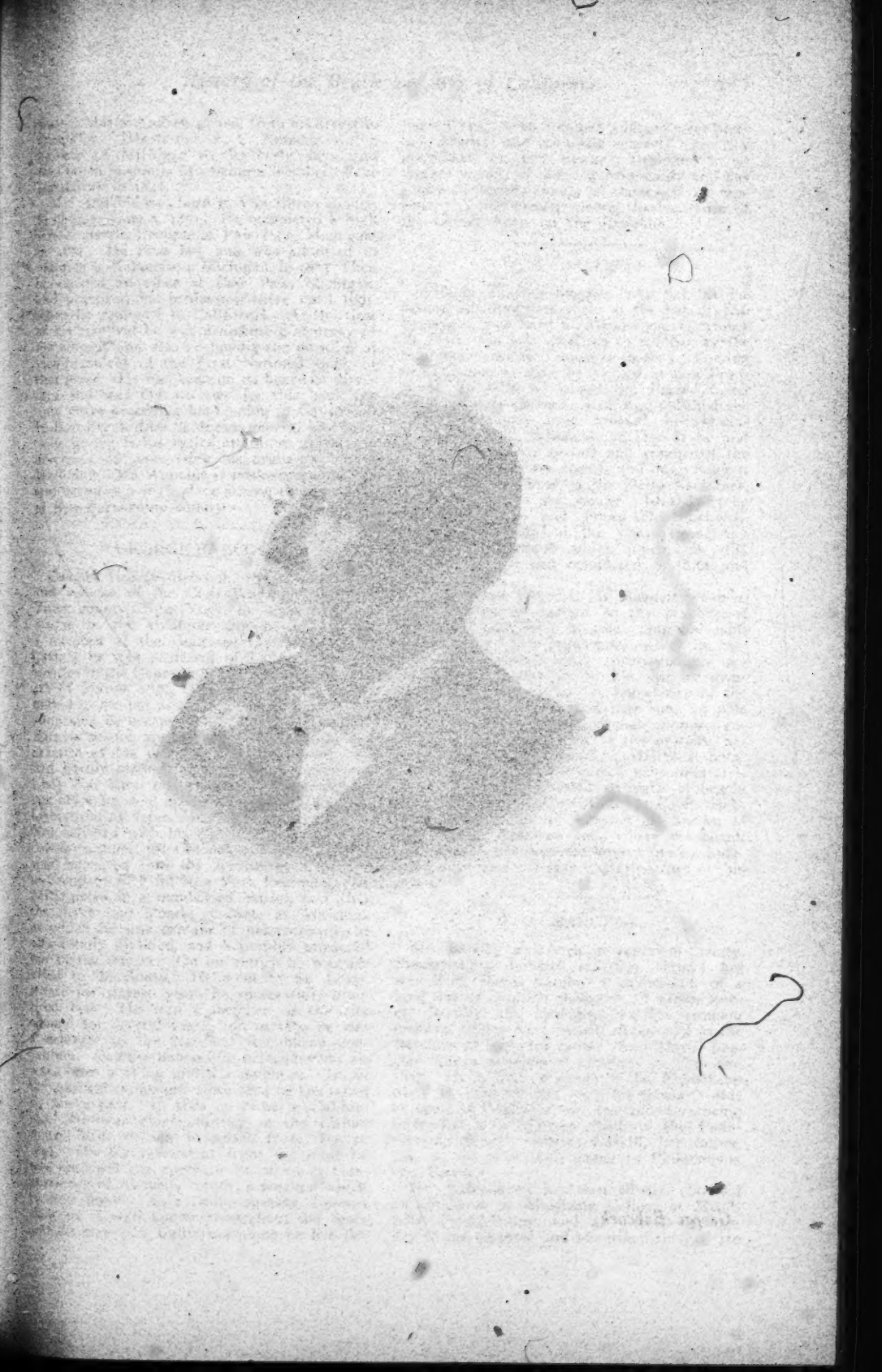
For thirteen years he was assistant adjutant general, with the rank of major, of the Fourth Brigade, National Guard. In 1890 he was United States supervisor of census. In 1893 he was a member of the assembly. From 1868 until 1876 he was associated in the practice of law with the late George Cadwalader, and has been counsel in some of the

important litigation, both civil and criminal, of this coast. For many years he has been well known in literary circles, having written much for the press and in the lines of general literature. He is well known in political campaigns, having taken part as a stalwart Republican in every contest for over thirty years. From 1875 to 1886 he was city attorney of Sacramento.

Judge Anderson (for he is at present the police judge of Sacramento City) has at all times been a close student, and in addition to his legal attainments is a lover of literature, particularly the drama, and has written a number of clever dramatic productions. His sketches of some departed eminent lawyers, published in the daily press, are valuable as matters of history. This is especially true of his article on the late Henry Edgerton.

E. R. ANNABLE.

This gentleman is descended through both parents from Puritan ancestry. The Annables are an old English family. His paternal ancestors came over and settled in Massachusetts in 1632. His grandfather, Lieutenant Edward Annable, served with distinction seven years without a furlough and to the end of the Revolutionary War. Among other duties he



George Babcock

was of Major Andre's guard, from his arrest to execution. His father, F. C. Annable, was a pioneer of Michigan in the early days, and was much in public life, being a member of the legislature in 1841.

Mr. Annable was born in Van Buren county, Michigan, June 3, 1851. He completed a high school classical course at Paw Paw, Michigan, in 1871. He read law and was admitted to practice at Kalamazoo, Michigan, in 1873. Then he opened an office at Paw Paw, Michigan, and practiced his profession there until 1891, when he removed to California. At the time of his removal he was prosecuting attorney of his county, and also occupying the position of vice-president of the First National Bank of that place. He had been on its board of directors and was the attorney for this bank for nine years preceding his coming to California. In San Bernardino he does a general law business, giving it his entire attention, except the diversion of supervising his orange ranch at Highland. Mr. Annable is in the prime of life, and occupies a high place among the attorneys of San Bernardino county.

GEORGE BABCOCK.

Colonel George Babcock, the noted orator and veteran of the Civil War, was born in Yates county, New York, in 1832. After a course in the common schools, he became a member of the Genessee College. Subsequently he was professor of Latin and mathematics in the Genessee Model School. On the 4th of March, 1856, Colonel Babcock was admitted to the bar at Albany. Shortly after his admission he accepted the principalship of the Batavia school, and in 1870 he commenced the practice of his profession in that town. He had hardly settled before the volcano of the Civil War burst on the country. Locking his law office, he went on the platform and assisted by his stirring appeals in raising two regiments. Not satisfied with his efforts in behalf of his country's cause, the Colonel, in February, 1861, was mustered into the service as a private in Company E, Fifth New York Regiment. He participated in a number of battles, and after the fierce and bloody struggle at Antietam, at which he was captain of his company, he was totally disabled, and honorably mustered out of the service. On his return he was advised to go South. He went to St. Louis, where for sixteen years he successfully practiced law. He was a member of the city council for several years, and in 1864 he was a delegate to the National Republican convention. Colonel Babcock in principles has always been a Whig and a Republican. In all the political campaigns since 1864 he has taken an active part. In 1882 he came to California. He was chief adjuster in the United States Mint at San Francisco from 1890 to 1894. On his retirement from the mint he was tendered the appointment of court commissioner of Alameda county, a position which he now holds. As a public speaker, Colonel Babcock is well known throughout the State and country. In California alone he has delivered over three hundred addresses on literary, political and economic subjects. He is a gentleman of fine literary attainments, an elegant writer, of pleasing personality and has a host of friends among all classes of our citizens, and particularly among the comrades of the Grand Army of the Republic.

W. T. BAGGETT.

William Thomas Baggett, who has become distinguished of late years at the bar of San Francisco, was born in Mississippi, December 16, 1850. He was admitted to the bar by the Supreme Court of Tennessee in 1873. Coming to California in 1877, he located in San Francisco. In 1878 he issued the *Pacific Coast Law Journal;* the next year he published the (San Francisco) *Law Journal*, in association with F. A. Schofield; in 1880-81 he and William H. Davis owned and conducted the journal first named above, and Mr. Baggett was then also editor of the *Daily Examiner*, of which he was part owner. In 1882-83 he and Mr. Davis, and James H. Stockwell, owned and published the (San Francisco) *Daily Law Journal*, which journal is still, in 1901, owned and conducted by him and Mr. Stockwell.

It was about 1883 that Mr. Baggett began to apply himself in earnest to the practice of law. He very soon became connected with some cases of first importance, which he carried to successful issue, surprising his acquaintances of the bar by his skill in management, as well as by his knowledge of the law. He is a far-sighted man and an able lawyer, and he has, for a decade or more, enjoyed great good fortune at the practice, acquiring a comfortable estate. His most notable case, in which he scored substantial triumph, after a protracted struggle, is briefly stated in the sketch of Hon. J. C. B. Hebbard—that of Fox vs. Levy et al., known as the Hale & Norcross suit, where his client, the plaintiff, obtained the largest money judgment ever rendered in a contested case in this State.

H. A. BARCLAY.

Mr. Barclay was born in Jefferson county, Pennsylvania, January 17, 1849. His father was Hon. David Barclay, a descendant of a long line of Scottish ancestors, of whom Robert Barclay, the apologist, was an eminent member. They were usually designated as the Barclays of Ury—the family seat. David Barclay was a member of congress in 1856 and 1857. He helped to organize the Republican party in Pennsylvania. On his mother's side he came of English stock—her ancestors being interested with William Penn in the Pennsylvania grant. Charles Gaskill, her father, was an extensive land owner in Philadelphia and Camden.

Mr. Barclay, by his own efforts, obtained an education at Allegheny College at Meadville, Pennsylvania, and at Cornell University in the classical and scientific courses. He

then took up civil engineering. He was engaged in the oil business in Pennsylvania for a number of years. He studied law and was admitted to the bar in 1871. He practiced law in Armstrong, Clarion and Allegheny counties until 1874. In that year he came to California and settled in Los Angeles. He endeavored to develop the oil industry in Los Angeles county, but failed to enlist capital, and resumed the practice of law in Los Angeles city. He was one of the founders of the Southern California National Bank, now the Merchants' National Bank, and was one of its directors and its attorney for a number of years. He has been interested in the development of Southern California, and was one of the founders of Corona, Rialto and Beaumont, and was largely instrumental in securing the forest reservations of San Gabriel and San Bernardino.

Mr. Barclay has paid particular attention to land and water litigation, corporation law, mechanics' liens, mining law, and is a member of the Southwest Miners' Association. Politically, he is a Republican. He was vice and acting chairman of the county Republican central committee in the Garfield campaign, in which Los Angeles county was carried for the Republicans for the first time in its history. He was elected chairman of that committee in the ensuing Blaine campaign.

Mr. Barclay was married, in 1882, to Miss Lily A. Ward, formerly of New Haven, Connecticut, by whom he has had two children. He resides at 1221 South Main street, Los Angeles city.

JOHN A. BARHAM.

John A. Barham was born July 17, 1844, in Missouri. He came with his parents to California in 1849, and has since been continuously a resident of this State. He was educated in the public schools and at the Hesperian College at Woodland, California. He taught for three years in the public schools, and during that period he read law. He was admitted to the bar in 1868, and practiced law successively at Watsonville, San Francisco and at Santa Rosa.

Mr. Barham was elected to the fifty-fourth congress from the First district in November, 1894, as a Republican, and was re-elected to the fifty-fifth and fifty-sixth congresses each time by an increased vote. The district was Democratic when he first ran, but he was elected to the fifty-sixth congress by 1354 majority. In the two last campaigns "Native Sons" were nominated against him. He claimed that, while he was not a native son, he got here as quick as he could. His period in congress was from March 4, 1895, to March 4, 1901. During his first term he took an active part against what was known as the "Powers funding bill," which was designed to fund the indebtedness of the Union, Central and Western Pacific Railways. He assisted in defeating it. His contention was that railroads should pay their debts the same as individuals are required to pay theirs. He was also an active and earnest advocate for the construction of the Nicaragua canal. His opposition to the "Powers funding bill" brought out the railroads against his re-election. He had intended to retire from congress at the end of his first term, but the opposition of the railroads caused him to announce his candidacy. This he did in a prepared interview from Washington, D. C. He gave no further attention to the matter, took no part in the election of delegates to the convention, and did not know who the delegates were that were chosen from his own home. Although many candidates in his party aspired to the high place, he was nominated by acclamation.

During his second term Mr. Barham offered an amendment to the senate bill for the settlement of the railroad indebtedness, which by his personal influence in the house was adopted, and by virtue of which the whole debt of the Union, Central and Western Pacific Railroads was settled and every cent of principal and interest, amounting to over $124,000,000, was paid into the treasury of the United States. Thus was happily removed from State and national politics an embarrassing question.

Mr. Barham had again intended to retire at the end of his second term, but his advocacy of the bill on amendment for the settlement of the railroad indebtedness called down upon him the wrath of demagogues, and he was denounced as a railroad hireling. In consequence of this, he again announced his candidacy for re-election. He was again renominated without the slightest intimation of opposition in his own party, and was re-elected by a largely increased majority. He procured the passage of many local bills for his district and at all times was a persistent, active and zealous advocate of the Nicaragua canal bill. No man took a more prominent part than Mr. Barham in the matter of this bill. After years of labor, he engrafted upon the Hepburn bill two amendments, one doing away with the necessity of acquiring sovereignty over the canal route (which was im-

Harmon Bell

possible under the constitutions of Nicaragua and Costa Rica), and providing simply for a right of way; and the other amendment relieved the bill from diplomatic embarrassment, leaving to future congresses the settlement of the question whether the canal shall be fortified, defended by the navy, or whether the canal shall be neutral. The adoption of this last amendment brought about the consideration of the bill in the house by unanimous consent, and it passed by a large majority.

Mr. Barham took a very prominent part in the measure for the construction of the Pacific cable from San Francisco to Manila, by way of Hawaii. He made a strong report on the "pure food bill," in which bill he took great interest. He is an influential member of the house, a member of the most important committees. He is in touch with the departments, and is a personal friend of the President. Mr. Barham never plays to the galleries, never looks back to see which way the procession is going, but is fearless in the performance of duty. He has made few speeches in the house; he believes that much time is wasted and money expended in useless and tiresome debate, but he has won a national reputation as an orator in the true sense of the word.

At the close of the campaign of 1898 he announced that he would not be a candidate for re-nomination. He was urged by members of all parties to reconsider and to again stand for re-election, but while accepting the high compliment, he firmly declined.

Mr. Barham is in the prime of life, and is about to return to the practice of the law. He is recognized as a lawyer of splendid ability, and intends, at the close of the fifty-sixth congress, to reside and follow his profession at San Francisco.

ARCHIBALD BARNARD.

Archibald Barnard was born at Montreal, in Canada, on the 10th of November, 1860.

He comes from a family of lawyers; his father, Edmund Barnard, was an advocate and a Queen's counsel; his grandfather, Edward Barnard, was for many years attorney general of Lower Canada. His great grandfather was also a lawyer. The Barnard family came originally from Deerfield, Massachusetts, and was amongst the first settlers of that State. Mr. Barnard's mother was the daughter of Charles King Austin, a member of the judiciary in Albany, N. Y.

Mr. Barnard was educated at St. Mary's College, in Montreal, and holds the degree of bachelor of arts from St. John's College, Fordham, N. Y. He holds the degree of bachelor of laws from McGill University, in Montreal. He was admitted to practice in Canada in July, 1882, and settled in California in 1886. He began his practice as an assistant in the office of Garber, Boalt & Bishop, of San Francisco.

Mr. Barnard has been repeatedly called to testify as an expert as to the civil law, governing French-speaking countries. He is conversant with the French and Spanish languages, has been conspicuous in politics, and is very prominent at the San Francisco bar.

JOSEPH C. BATES.

Mr. Bates has been at the San Francisco bar, and one of its most active and prosperous members, since the far-off year 1866. While he follows all departments of the practice, except criminal, his specialties are probate matters, street assessments, special proceedings, and also libel and slander cases have received his attention.

He was born at Richmond, in the state of Maine, on July 1, 1836, of an old New England family. He graduated from Bowdoin College in the class of 1863, one of his collegemates being Hon. Thomas B. Reed, who is referred to in this History. He began reading law in 1864, while teaching school at Redwood City, California. He located at San Francisco on April 30, 1866, and went into the office of Horace Hawes, the author of the San Francisco consolidation act, and was admitted to the bar by the State Supreme Court in the year following. He has practiced through this long period without a partner. He is a Republican in politics, and never sought office. The Horace Hawes will contest, commenced in 1871, was the first important case that came into his office, which resulted in the breaking of the will and the annulment of the deeds of trust attempted to be executed by decedent.

Said estate was closed in the Probate Court by partition under the probate partition law, and was the first estate of much value in which partition was carried through in the Probate Court in San Francisco, as doubt existed in the minds of leading lawyers at the bar of the power of the Probate Court, under the constitution, to make partition of estate of decedents. The question was finally settled in the case of Robinson vs. Fair, 128 U. S. 85, which was the first, but not the last, case of Mr. Bates in the United States Supreme Court.

Mr. Bates was married at San Francisco in 1868 to Miss Bertha Comstock, a native of Louisiana, and has a son and three daughters living.

HARMON BELL.

Harmon Bell, of the San Francisco bar, was born in Oakland, California, on March 23, 1855, the son of Rev. Dr. Samuel B. and Sophia Walsworth Bell. Samuel B. Bell was a man distinguished in both religious and political life in the early days of this State. He was the first pastor of the First Presbyterian Church of Oakland, and one of the founders of the College (now University) of California. We knew him when he represented Alameda and Santa Clara counties in the State senate at the sessions of 1857 and 1858, the legislature then meeting annually. He was a close friend and admirer of Baker, and was himself a strong and logical speaker. The session of 1857 was the first at which the Republican party had a representation in either house.

That party, of which the elder Bell was one of the organizers in this State, had just elected their legislative delegates in San Francisco and Alameda counties. Some extracts from Samuel B. Bell's speeches are in our book, "California Anthology." He was in the legislature again at the thirteenth session, at a most stirring war time, now representing Alameda county only, and being in the assembly.

Harmon Bell received a fine education, and was admitted to the bar in 1878. Since that time, at different places, he has always been actively occupied in his profession. For a period he resided at Kansas City, Missouri, and for two years represented that city in the state legislature. He has been at the bar of San Francisco for only a few years, but has acquired a good practice. He is a very competent and devoted lawyer, possessed of many engaging qualities, and inspires a kindly feeling in all who come to know him.

Mr. Bell is of Republican politics, a Knight Templar Mason, and a member of the Mystic Shrine. He was married in 1880 to Miss Catherine Wilson, daughter of A. J. Wilson, Esq., and Margaret Wilson, of Santa Barbara. There are two children of the union now living, Traylor W. and Joseph S. The family home is on Prospect Heights, Oakland.

HORACE BELL.

Major Bell was born at New Albany, Ind., December 11th, 1830. His paternal and maternal ancestors were of the Parson Holmes colony that landed in Boston from six ships in 1719. This colony was made up at Manchester, England, and has been known as the Scotch-Irish Presbyterian colony. His mother's family name was Wright. The Wrights, McKees, Williamsons and Bells were of the original settlers of Fort Pitt, and were of the founders of Pittsboro, now Pittsburgh, in 1789. They were all kinspeople.

Our subject left school in Kentucky at the age of eighteen years, and came overland to California, arriving at Sacramento on the 19th day of August, 1850, and, except when absent in the wars, he has since resided in this State. In his first two-and-a-half years in California young Bell engaged in mining, with moderate success. In October, 1852, he went to Los Angeles. In 1853 he became a member of the famous Ranger company, organized by the State for the purpose of putting down the Joaquin Murietta outlaw band, and of pacificating turbulent California, embracing the region extending from San Francisco to San Diego. In 1856 he joined the American army of occupation in Nicaragua, under President Rivas and General William Walker, and although only twenty-five years of age, he rapidly arose to the command of a six-company battalion and served as such until the end of that most sanguinary war. In 1858 he returned to Indiana and took an active part in the border troubles that flamed along the Ohio river. For his conduct during that epoch he has been enrolled on the list of border heroes. This part of the Major's career, however, pertains to Indiana, and appears on the historical records of that state. The late Secretary of State, Walter Q. Gresham, who was intimately associated with Major Bell during the Civil War and the border troubles preceding the outbreak of actual hostilities between the North and the South, in a conversation with Judge E. H. Lamme, formerly of Indiana, now a leading lawyer of Los Angeles, a short time prior to Judge Gresham's death, said: "I think Horace Bell is the most courageous man I ever knew."

In 1859 Major Bell went to Mexico and joined the army of the great patriot, Benito Juarez, and served in a campaign in the "Reactionist" war—Miramon against Juarez. Returning to California in 1860, he in March, 1861, went east to take part in the war that was then imminent. He went via San Francisco, Panama, Havana, New Orleans, arrived at Indianapolis in April and joined the first regiment he met, the Sixth Indiana, and was mustered into the United States service April 22, 1861. He served until the end of the war.

At headquarters, Department of Louisiana, where Major Bell had served on the staff of General Canby for about two years, a record of his service was made up, and recorded at the war department, to which a certificate was appended, from which we make the following extract, referring to Major Bell:

"His gallantry, resolution, promptitude and intelligence have been marked and commended. He is a man who does what he undertakes, and is to be trusted in what he does. He has rendered the government of the United States great service."

At the close of the war, Major Bell returned to Los Angeles, arriving there in July, 1866. In 1872, he opened a law office, and took a leading place at the bar, and has maintained such position until the present writing.

In his modest way, Major Bell does not claim any particular merit, but will sometimes say: "Well, I guess I am about as good as any of them."

One time (it was in November, 1882) the Major stepped out of the legal harness and assumed the editorial tripod. He attacked the local government, judicial and municipal, which he charged to be utterly corrupt. He declared war on the whole, excepting only from his onslaught Judge Volney E. Howard of the Superior Court, and A. W. Potts, county clerk, whom he regarded as absolutely honest and incorruptible. The result of the next election was gratifying to the Major, and he was able to say in 1888, upon his retirement from his editorial chair: "I have hung the gory scalps of the last mother's son of them on the ridge-pole of my tent."

This was no easy matter for the Major, however, for twenty civil suits for libel were brought against him, aggregating, in alleged damages to the characters of the complainants, the sum of over $100,000. All of these came to naught. In his paper, Major Bell attacked the police force and its chief until the latter official invaded the editor's sanctum and opened

upon him with a 44-calibre revolver. The Major escaped with a slight powder burn on his right hand, and the chief escaped by hasty flight, leaving his official chapeau and his revolver as trophies to adorn the editorial office.

In 1881 Major Bell published a book on California life, called "Reminiscences of a Ranger," a most readable and popular work; and he now has ready for the press another similar work, besides several others pertaining to like reminiscences.

On the day Fredericksburg was fought December 14th, 1862, the Major was married in New York to Miss Georgia Herrick, of the famous Herrick family of New England, and a niece of the celebrated Dr. Herrick, of Albany, N. Y. The lady accompanied her husband to the seat of war in the Gulf States, and remained at New Orleans until the family home was established at Los Angeles. In that city she became so poular on account of her amiable disposition and sterling qualities that the city council named a street in her honor, "Georgia Bell," one of the finest suburban avenues in Los Angeles.

Mrs. Bell died June 8, 1899, having carefully reared a large family.

DAVID P. BELKNAP.

This gentleman, now retired, was for over forty years at the San Francisco bar. Born in the city of New York in 1825, he attended school in his native place, and subsequently completed his education in the University of New York, graduating from that institution with high honors in 1844. He arrived in California in December, 1850, and first located in San Jose, having previously been admitted to the bar by Hon. Greene C. Bronson, then Chief Justice of the Supreme Court of New York. In 1852 he removed to San Francisco to prosecute various Spanish land claims before the United States land commission. Here he continued to practice until 1857, when he entered the office of William Duer, who had been elected as county clerk of San Francisco on the People's party ticket. Mr. Belknap had the entire supervision of the probate department throughout the two years of his connection with the office. He, however, found time during his otherwise leisure hours to prepare and publish a work on probate practice, and likewise Bancroft's first law form book. He resigned his position in the county clerk's office to resume law practice. For six months he had associated with him James F. Bowman, who afterwards abandoned the law for journalism, in which profession he became distinguished, and who died at San Francisco in 1881. Mr. Belknap formed a partnership next with S. S. Wright, for a brief period, after which he was associated with John F. Swift, who was destined to attain eminence and wealth. In 1861 Hon. Edward Tompkins, formerly law partner of Daniel S. Dickinson, in New York, was Mr. Belknap's associate, the firm being known as Tompkins & Belknap.

In 1862 Joseph W. Winans, the leading pioneer lawyer of Sacramento, removed to San Francisco and became connected with the firm, and when Mr. Tompkins withdrew, in 1863, the two former continued in business as law partners for over twenty-five years, in the same office.

Mr. Belknap is a gentleman of refined taste and is an enthusiastic admirer of paintings, statuary, and rare and unique articles of vertu. The Art Union, Bohemian, and other literary and social clubs long acknowledged him as one of their choicest and liveliest spirits. Of the first named association he was once the president and the inspiring and directing genius. He is a fine belles lettres scholar, and his esthetic accomplishments render his society highly attractive. Although dignified in deportment and reticent and reserved in the society of formal acquaintances, Mr. Belknap has a rich fund of humor, and when commingling with intimate companions he contributes greatly to the enjoyment of the occasion.

F. A. BERLIN.

Frederick Augustus Berlin, a native of the state of John Marshall, which has contributed so largely to the bar of California in all periods of our history, was born on August 1, 1848. He received his education at Roanoake College, Washington and Lee University, and the University of Virginia. At the institution last named he prepared for the bar, and took the degree of Bachelor of Law.

Mr. Berlin came to California in February, 1875, and has always since practiced law in San Francisco. Without especially attracting the public eye, he has, for some twenty years, prosecuted a large general law business, with exceptional success. He is a man of strict morality, with a high sense of honor, and an exact interpretation of justice, as well as learned in the law; and his prosperity has been the result of correct methods. As the product of faithful professional toil, combined with some business enterprises, he has accumulated a considerable fortune.

It has been given us to observe Mr. Berlin's career at the bar from its inception. He enjoys universal respect, and dignifies his calling. He is an influential member of the Presbyterian Church.

Mr. Berlin married, at San Francisco, a young lady who is a native of his own state, one of the daughters of the late Colonel D. L. Smoot, who was district attorney of San Francisco in 1880-81. They have several bright children.

CALVERT T. BIRD.

Calvert T. Bird was born at Fayetteville, Alabama, in 1841. With his parents, he came to San Jose, California, in 1851, where he has ever since resided. He acquired his education mainly at the Gates San Jose Institute, a famous school of early days, and at the College of California. During the year 1871 he com-

menced the study of law, but did not then intend to apply for admission to the bar. Later, however, he had occasion to use his legal knowledge and applied for and obtained from the Supreme Court of California his license as an attorney and counselor. Since then he has applied himself with an earnestness that has brought him success. His sound judgment and knowledge of the law have secured for him a large clientage.

Mr. Bird was a commissioner of the United States Circuit Court, Ninth Judicial District, during the years 1889 to 1897. Those who know him recognize him as a man of enlarged views and great power of mind. He is a man of strict integrity, a safe counselor, always liberal and practical, and possessing the courage that "dares to do right."

JAMES H. BLANCHARD.

James H. Blanchard was born in Niles, Michigan, December 6, 1847. He entered Michigan University in 1866 and was graduated from the literary department in 1870. He studied law in the office of Felch & Grant at Ann Arbor, and was graduated from the law school of the Michigan University, in 1872. He was admitted to the bar by the Supreme Court of that state in the same year. He came to California in 1873, and was also admitted to the Supreme Court of this State. He located at Los Angeles, and entered on the practice of law. In 1890 he undertook the management of the *California Voice*, the organ of the Prohibition party, but in 1894 he again returned to his profession. In 1896 he was the candidate of his party for attorney-general, and in 1900 was nominated and ran as Presidential elector. He is an enthusiastic expounder of the doctrines of the Prohibiton party, and usually takes the stump in each campaign. He is married his wife (formerly Miss Lucy Shackelford) also takes an active interest in all temperance work. They have no children.

ROBERT E. BLEDSOE.

Robert E. Bledsoe was born on the 26th day of April, 1845, near Shelbyville, Mo. He is a grandson of the distinguished Senator Jesse Bledsoe, of Kentucky. The father of R. E. Bledsoe was born at Frankfort, and his mother at Paris, Ky., each having the advantage of a most liberal education. They lived during the years of Robert's minority, on the frontier, where school houses were few and far between, and it so happened that Robert had no early educational advantages. The family moved from Jackson county, Oregon, in 1869, to the San Bernardino Valley, where they engaged in farming.

In 1875, while Robert was engaged in hauling lumber from the saw mills in the San Bernardino mountains over one of the most dangerous roads in the state, he was elected justice of the peace for San Bernardino township. He held the office for the term of two years, during which time he studied law as well as justice.

In 1877 he was admitted to practice in the District Court, and in 1883, while he was district attorney of San Bernardino county, he was admitted to practice in the Supreme Court, where ever since he has maintained a high standing.

Mr. Bledsoe began the practice of law under great disadvantages. He was entirely without means and without even a common school education, and at the time he entered the legal arena the San Bernardino bar was one of the most distinguished in the State. Mr. Bledsoe was energetic and read and studied law incessantly; he also read history extensively, and pursued many other subjects

necessary to be understood by every successful lawyer. He rose rapidly in the profession and for several years has been recognized as one of the best lawyers in Southern California, and especially on the criminal side of the practice.

He first won distinction in this branch of the law in the prosecution of William R. McDowell, whom he convicted of murder in

1883, when he was district attorney. McDowell was executed for the crime at San Bernardino in 1884. It is said that our subject has defended more men charged with murder than any other lawyer in Southern California, besides assisting in the prosecution of several celebrated cases. His success, however, has been as attorney for the defense. He secured the acquittal of William Rawlins at San Diego in 1889, charged with the murder of Captain Gilbert. This contest was a memorable one; the prosecution was most persistently and ably conducted. His defense of Charles Marshall in Riverside county was considered the most remarkable ever made in that county. Marshall was the only one of Bledsoe's clients upon whom the death sentence was ever passed. However, he secured a reversal of the judgment in the Supreme Court, and upon a second trial Marshall was convicted of murder in the second degree and sentenced to sixty years' imprisonment. Marshall had killed two men in the row, one of them an officer, and public opinion was very strong against him.

The acquittal of Horace Adams, William Farley, Chas. Grimes and, more recently, Geo. H. Walker, the Redlands policeman, besides many other defendants who were only convicted of manslaughter, makes a flattering record of successes.

In the last three cases, Mr. Bledsoe was ably assisted by his son and partner, Mr. Benj. F. Bledsoe, a young lawyer of marked ability. Young Bledsoe made the principal argument in the Walker case, and his argument was the subject of many comments from the densely crowded court room.

Mr. Bledsoe is well known all over the State, always faithful to his clients, active and persistent. He is a good trial lawyer and always thoroughly prepared; a rapid and merciless cross-examiner, and manages to get on the good side of a jury.

Judge Smith, of Los Angeles, who presided at the murder trial of John F. Milner, in Riverside county, where Bledsoe was assisting in the prosecution, said that it seemed as if the jury regarded this advocate, while making his argument, as one of their own number.

JOHN H. BOALT.

John Henry Boalt was born at Norwalk, Ohio, on the 29th day of March, 1837. After graduating at Amherst College, he concluded to make mining and mechanical engineering his profession, and with that end in view he went to Germany, and spent one year in study at Heidelberg, and two years at the famous mining school at Frieburg, at which so many of our leading mining experts and engineers graduated. After completing his course at these universities, he spent some months traveling in Europe preparatory to his return to the United States. Our great war breaking out, he at once returned, entered the army and was appointed lieutenant in Company D, of the Eleventh Ohio Cavalry. He was soon after transferred to the Signal Corps, and placed on the staff of General Curtis at Fort Leavenworth, where he served until the close of the war.

Nevada had now been admitted as a state. The great Comstock lode had been discovered, and was yielding its output of the precious metals in such richness and quantity as had never before been known in the annals of mining. Naturally, the young man turned his attention to this Eldorado. He located at Austin, Nevada, then a thriving mining camp called the Reese River Mining District, newly discovered in Lander county, and supposed at that time to equal, if not excel, the famous Comstock lode at Virginia City. Everything was life, activity and speculation. In 1865 he formed a partnership at Austin with Charles A. Stetefeldt in the mining and assaying business. It was during their partnership that the Stetefeldt Furnace Company was formed, for the purpose of reducing metalliferous ores. The process, in which he was one of the promoters and owners, was patented, and from its success he and his associates derived a large revenue.

But this was not the vocation in life that came naturally to him. He soon abandoned it for the broader field of the law. His intimate associates at this time were members of the bar, and Austin had a bar which would be eminent in any city. Men of great legal attainments had come from all parts of the country, allured by accounts of the fabulous wealth of this new mining region. With such associates it is not strange that he drifted into the legal profession. His instincts, too, all turned in that direction. He delighted in discussing legal propositions, and loved the law as a science. If there is anything in the theory of heredity, it is well exemplified in his case. He came of a long line of illustrious ancestors, on both sides of his house, eminent in the legal profession as well as in politics and public life. His father, Charles L. Boalt, was a lawyer of large practice and high reputation in northern Ohio. His mother was a daughter of Roger Griswold, a great jurist in his day, and Secretary of War under John Adams; his great-grandfather, Matthew Griswold, was Governor of Connecticut and President of the convention of that state which accepted the Constitution of the United States; his great great-grandfather, Roger Wolcott, a signer of the Declaration of Independence; his great uncle, Matthew Griswold, was Chief Justice of the state of Connecticut, and his great uncle, Ebenezer Lane, was for a long period Chief Justice of the state of Ohio.

When the county of White Pine was formed out of Lander county, Judge Beatty, now Chief Justice of the Supreme Court of California, was Judge of the Sixth Judicial district, Lander county, Nevada. He resigned to take the office of Judge of the new county of White Pine, and Judge Boalt was appointed to fill his unexpired term, upon the unanimous request of the bar of Austin. At the expiration of his term of office he moved to San Francisco. He has never since held, nor

been an aspirant for any office. While devoting his time, however, exclusively to his profession, he has always evinced an active interest in politics, and upon all the leading issues of the day he has taken a prominent place. With his pen and in public speeches he has contributed much to the formation of public sentiment. An article published by him in the *Overland Monthly* in November, 1888, on the silver question—a masterly and exhaustive treatise on that intricate political problem—has been largely quoted from by the leading statesmen of the day.

He read a paper on the Chinese question before the Berkeley Club in August, 1877, in which he favored the exclusion of the Chinese race, as a policy necessary to the perpetuity of our form of government, and the advancement of our best interests. In this paper he showed conclusively that the Caucasian and Mongolian races are non-assimilating, and cannot live together harmoniously on the same soil, unless one be in a state of servitude to the other. To him is largely due the agitation of the question of Chinese immigration in the California legislature of 1877-78, which culminated in the passage of an act calling for a popular vote to test the views of the people of the State of California on the Chinese question. Hon. Creed Haymond, then in the State senate, proposed the act and referred to this paper of Judge Boalt's as its source.

Judge Boalt came to San Francisco in 1871, and soon thereafter the law partnership of Estee & Boalt was formed, which continued in existence until 1879, when it was dissolved by mutual consent. Judge Boalt then retired for a time from practice, and with his family went to Europe, where he spent about two years in travel. Returning to San Francisco, he opened an office alone.

On the first of April, 1889, Judge Boalt formed a partnership with Hon. John Garber and Thomas B. Bishop. The firm of Garber, Boalt & Bishop was, in the estimation of some sound judges, the strongest on the Pacific coast. It was dissolved in 1895 when Judge Boalt retired from practice.

Judge Boalt is a man of fine presence, genial in disposition and universally beloved by his associates. He is a leading light in both the Bohemian and Union Clubs. His home since he came to California has always been in Oakland. He has a family, and a considerable fortune.

A. E. BOLTON.

A. E. Bolton was born in 185- in Cleveland, Ohio, of plain Yankee parents. At the age of six years, his parents moved upon a farm near Cleveland, where he got seven months of good solid hard work, and five months of old fashioned district schooling. He had then reached the age of eighteen years. At that time his father died, and within ninety days thereafter he bid goodbye to the farm and enrolled in the preparatory department of Oberlin College. There he studied as hard as he had worked on the farm. The sudden change from overwork on the farm to over-study greatly impaired his health. His physicians informed him that he must leave school, forever abandon books and lead a farm life, or wholly an outdoor life. Under their advice he went to Denver, Colorado, where he fully regained his health. He then read law in the office of Messrs. France & Rodgers, leading practitioners of Denver at that time. In 1875 he came to California, and in 1876 commenced the practice of the law at Santa Cruz. He remained there for a number of years. During most of the time he held the position of city attorney. While in Santa Cruz he met Hon. J. A. Barham, who was then a practitioner at that bar, and they became and have always remained fast friends. In 1880 he had overcome the first struggle of his professional life, and made for himself a leading place at the bar of Santa Cruz. His income then warranted his fulfilling a long-overdue promise, and he married Miss May Wilcox of Cleveland, Ohio.

Not satisfied with the opportunities for the future in Santa Cruz, he moved to San Francisco in 1884. In the meantime his friend, Hon. J. A. Barham, had located at Santa Rosa, and with a large and lucrative practice, was in failing health. At his earnest solicitation Mr. Bolton moved to Santa Rosa and joined him. A partnership was formed under the name of Barham & Bolton, which became widely known in that community, and much important litigation was conducted by them. Later Mr. Barham's son being admitted to practice, Mr. Bolton returned to San Francisco, leaving a valuable practice to Mr. Barham and his son. Later Mr. Barham entered the field of politics, and for many years served as a member of congress from his district.

In San Francisco Mr. Bolton became associated with Mr. Philip G. Galpin, who for many years had been recognized as one of San Francisco's foremost practitioners. The firm of Galpin & Bolton fill an important legal circle. Mr. Bolton has never shown any desire for social, political or fraternal distinction.

Nicholas Bowden

He has never wavered from the purpose he formed back on the Ohio farm. All his energies have been bent to the one purpose of being an able, painstaking and honored lawyer.

A. G. BOOTH.

Andrew George Booth was born in New Hampshire in 1845. He is a graduate of Amherst College, Massachusetts, his preparatory course having been taken at Kimball Union Academy, Meriden, New Hampshire. In the year 1869 he came to California, and, in the office of Andrew J. Gunnison, at San Francisco, completed his legal studies which he had begun in his native state. In the following year he was admitted to the bar. Practicing alone until 1874, he then became associated with the veteran just named, under the style of Gunnison & Booth. This firm has since continued to the present day. Mr. Walter J. Barnett became a member in 1895. It is one of the very oldest law firms in the State, and has long been occupied with a varied and valuable business—that of street railroad companies; the affairs of the California Safe Deposit and Trust Company, in whose fine building their offices are located; many corporations, and a large probate practice.

Mr. Booth, in addition to an active law business, has been prominent in politics, and in matters of public concern. He was a member of the assembly at the twenty-fifth session, 1883, and the extra session of 1884. The legislature was heavily Democratic in both branches. Mr. Booth led the Republican minority in the assembly. He was ready and judicious in discussion, and won a high reputation for watchfulness and wisdom as a legislator.

Mr. Booth has done his party good service in State and municipal conventions, and on the platform, but probably most in council. He is a thoughtful, deliberate man, one of the class who make the fewest mistakes. He has been a trustee of the State Library, was a member of the board of freeholders that framed the proposed city charter for San Francisco in 1886, and, after having been first vice-president, is now president of the leading Republican club of the State, the Union League Club of San Francisco. He is Past Grand Chancellor of the Knights of Pythias, and is advanced and influential in the Masonic order. During the remembered tour to the Triennial Conclave at Washington, D. C., in 1889, he was Commander of Golden Gate Commandery, Knight Templar.

WALTER BORDWELL.

This gentleman was born on a farm in Calhoun county, Michigan, in 1858. He was educated at the common schools and at Olivet College in that state. After considerable business experience he studied law at Lansing, and was there granted a license to practice by the State Supreme Court.

Mr. Bordwell came to California in 1889, locating at Los Angeles, and has always since lived there, acquiring a fine business and attaining professional prominence.

In 1883 Mr. Bordwell married Miss Mary E. Willits, daughter of Hon. Edwin Willits, then member of congress from the Second district of Michigan. The fruit of this union is a daughter, born in 1890.

NICHOLAS BOWDEN.

Nicholas Bowden was born in Ireland, forty-eight years ago, and came to America with his parents while yet an infant. His family settled in Cooperstown, New York, where he spent his youth and acquired such education as the public schools of those days afforded. At the age of fifteen he left school to enter the world of action, and there complete his education in the great university of practical experience, where he learned to do by doing.

In 1869 young Bowden decided to leave New York, turned his face westward, and located at Evansville, in Southern Indiana, where for several years he filled responsible positions as accountant, cashier and manager for two of the principal commercial houses of that city. Subsequently he assumed the management of the *Daily Courier*, one of the leading newspapers of Indiana, took an active part in state politics and helped to direct the public affairs of the state, until 1877, when he found it necessary to seek a milder climate. After visiting Colorado and several sections of California, he went to San Jose. A few months stay in the Garden City brought him good health, and the conviction that the congenial climate and superior social conditions of the Santa Clara Valley were as nearly perfect as it was possible to find, and he decided to make San Jose his permanent home.

Later in the same year Mr. Bowden took the management of the *Daily Herald*, and for three years conducted it with skill and vigor. With that force and energy, characteristic of the man, he elevated the standard of the newspaper, and widened its influence, until it became a power in Democratic circles, both local and State, and placed it upon a firm, political and financial basis.

Mr. Bowden always had a strong leaning towards the law, and in the winter of 1880-81 he took up the study and finished his reading in the office of Judge Lawrence Archer in 1882. Immediately after his admission to the Supreme Court, in November of the latter year, a copartnership was formed between Judge Archer and himself, which continued for ten years. His present office, rooms 45, 46, 47, 48 and 49 Rea Building, at the corner of Santa Clara and Market streets, in the city of San Jose, are models of convenience, perfect in their appointments, and equipped with one of the best working libraries in the State.

On October 4, 1883, Mr. Bowden married Miss Sallie Trimble, daughter of the late John Trimble. There are five children of this marriage, four boys and one girl. The Bowden home, the residence of the family, on "The

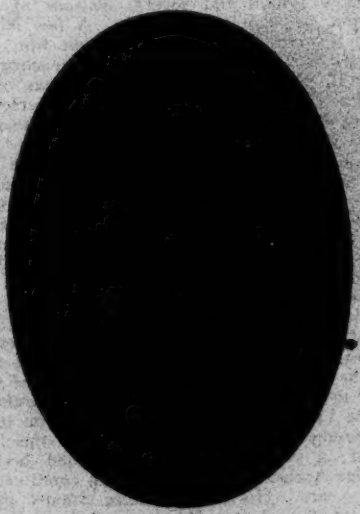
Alameda," is one of the most beautiful in the valley.

During Mr. Bowden's residence in California he has always taken a citizen's interest in local and State politics, but is in no sense a politician, and has never been an applicant or candidate for office. From the very beginning of his career as a lawyer he has enjoyed a lucrative practice. He has been engaged in many of the principal civil and probate cases, not only in Santa Clara county, but throughout the State, and has been on one side or the other of much of the important litigation of Santa Clara and adjoining counties, during the last eighteen years.

Mr. Bowden is the President of the Santa Clara County Bar Association, and has been at its head since its organization. He is also a trustee of the San Jose Law Library and its present Treasurer.

E. C. BOWER.

E. C. Bower was born in Cuthbert, Ga. His great grandfather was a sculptor and resided in Providence, R. I., in 1776. His grandfather, Isaac Bower, was a merchant, and moved to Georgia in 1809. Isaac E. Bower, the father of E. C., was a prominent lawyer of Georgia from 1850 to the time of his death in 1873.



E. C. Bower was the fifth son. In 1867, when seventeen years old, he was deputy United States internal revenue collector for a sub-district of Georgia. He was admitted to the bar in 1868, when a little over eighteen years old. In 1871 he was a delegate to the Democratic state convention in Georgia. In 1872 he was alternate delegate to the national Democratic convention at Baltimore. He was a delegate to the St. Louis Democratic convention of 1876, which nominated Tilden and Hendricks (a distinguished honor for a young man, when Georgia Democratic leaders were striving for the distinction), and having as associates Hon. G. M. Smith, the Governor of Georgia, Hon. Rufus E. Lester, P. M. B. Young, Mark H. Blanford and John I. Hall, with Hon. Patrick Walsh, afterward United States senator, as secretary of the delegation. In 1877 he was nominated state senator and was elected with but little opposition. During his four years' term in the Georgia senate there were two impeachment trials of state officers, in which he took a prominent part. In 1879 he married Miss Harriet S. Daffin, of Georgia, by whom he has had eight children.

After his marriage he took no further part in politics, but devoted his time to his profession. He was considered a successful lawyer in Georgia, as the many decisions in the Supreme Court reports of Georgia, in which he was counsel, will attest. In 1884 he was mayor of Blakely, Georgia, where he then resided, and a year or so prior was master of the Masonic lodge of that place.

Mr. Bower, in 1886, moved from Georgia to Los Angeles, Cal., where he has since resided. In California he has taken no part in politics, except in 1894, when he was the Democratic candidate for district attorney for Los Angeles county, and went down to defeat with the balance of his ticket. He has practiced law in Los Angeles since his residence there.

His practice in the Superior Court of that county has met with varied success. But the Supreme Court reports of the State show many questions presented by him in which his views prevailed. A few of these may be mentioned. The case of Holmes v. Heathun is one in which the question of homestead rights was raised, and the lower court was reversed. In Marriner v. Dennison (which was twice appealed by defendant) the last judgment was reversed, on the ground that it was against the preponderance of evidence; there being a conflict of evidence in the case—something unusual in our Supreme Court decisions. In Royal v. Dennison the case was decided against him and a new trial refused, and the decision in department affirmed the judgment of the lower court. On a hearing in bank the court reversed the department and the lower court.

The question as to whether there could be more than one original contractor in a building contract was first raised by him in La Grall & Craft v. Mallord, and he was sustained.

While the litigation conducted by Mr. Bower has not been of State notoriety, yet the principles involved have been important and often original, and the conduct of his cases has shown the work of an expert in the profession.

There is, perhaps, no lawyer in the State who is better posted in the practice of the courts, or who is more familiar with the provisions of the codes, and the decisions of the Supreme Court.

F. S. BRITTAIN.

Frank Smith Brittain is a native of Philadelphia. He was educated as a civil engineer, and for a few years practiced as such both in railroad and municipal work. While thus engaged he was required to make a special study of the land and commercial laws of Spain, Mexico and Texas. Under these circumstances the transition from the engineer to the attorney was natural. Under the tutelage of one of the most eminent lawyers in Texas he prepared for the bar and was admitted to practice in that State. In 1894 he came to San Francisco, since which time he has been engaged, either as counsel or in assisting counsel, in much of the important litigation which has occupied the attention of the courts.

On the day war was declared with Spain, Mr. Brittain tendered his services in any capacity to the Governor and to the secretary of war. By the latter he was ordered to appear before a board of army officers for examination for a commission in one of the three regiments of volunteer engineers. He thereupon applied for a second-lieutenancy, but as a result of his examination, he was, by the President, commissioned first lieutenant in the Second regiment of engineers. His great regret is that his command was not on the firing line. It had, instead, nearly a year's hard service in Honolulu. During that time Mr. Brittain was examined by Chief Justice Judd, and one of his associates, and was admitted to the bar of the Hawaiian Republic. In the military service he was the only judge advocate in the district of Hawaii, and he was continually on duty as such, as well as acting as the legal adviser of the military authorities, during the period he was in Honolulu.

Prior to going into the military service, Mr. Brittain was first the managing clerk of the then large offices of Delmas & Shortridge, and was afterwards a member of the firm of Shortridge, Beatty & Brittain. The business of the firm was continued in the old name until Mr. Brittain's return from Honolulu, when he withdrew from the partnership and opened offices alone. He believes in the religion of unremitting, painstaking labor, and attributes what success he has had in the law, largely to the methods of thought in which he was drilled in acquiring his education as an engineer.

JULIUS BROUSSEAU.

Mr. Brousseau was born at Malone, Franklin county, New York, on December 17, 1834. In his infancy his parents moved to Monroe county, in that state, where he was educated in the public schools and in Lima Seminary, and lived there until he reached the age of twenty-five years. After teaching school for eight or nine years, he went to the city of Flint, Michigan, and read law in the office of Hon. William Newell, District Judge. In the fall of 1861 he was admitted to the bar of the Supreme Court of Michigan, and commenced practice at Flint. After two years he removed to the city of Saginaw, where he practiced with good success for about seven years. In this period he served two terms as city attorney. His health becoming impaired, he removed, in the spring of 1870, to Kankakee, Illinois. There he had another seven years of professional prosperity, at the end of which time he moved again, for the same cause as before. He was then in his second term as city attorney, but resigned, and started with his family for California.

Settling at Los Angeles on the 16th of January, 1877, Mr. Brousseau shortly afterwards entered into partnership with Hon. Volney E. Howard, and the latter's son, Frank Howard, the firm name being Howard, Brousseau & Howard. The association of these gentlemen was dissolved when Judge Howard went on the bench three years later. Mr. Brousseau then practiced alone until May, 1886. Ex-Judge David P. Hatch, then moving to Los Angeles from Santa Barbara, the firm of Brousseau & Hatch was formed, and continued until 1882.

Mr. Brousseau's practice in this State has been in the civil line, and of recent years he has given much attention to water litigation, his practice having been attended with much success, although, in Michigan, he was chiefly distinguished for his ability in criminal cases.

His aged parents from the East joined him at Los Angeles in 1883. He bears his father's full name, and his mother was Miss Marienne Jarvis. Both were of French birth. His father is still living, at the age of eighty-eight years.

Mr. Brousseau married Miss Carrie Yakeley at Ypsilanti, Michigan, in the fall of 1860. The lady is a native of New York, her father being English, her mother German. They have two sons and two daughters, all grown. The eldest daughter, Miss Kate, after graduating from the State Normal School at San Jose, traveled in Europe for a year and a half, and became proficient in the French and German languages. She has attended the University of Paris for five years, and is now one of the faculty of the State Normal School at Los Angeles. The other daughter is accomplished in music. The sons, Edward and Roy, are graduates of the Los Angeles High School. Edward has care of his father's orange orchard at Redlands, and Roy is in the office with his father and fitting himself as an illustrator and designer.

Mr. Brousseau is a Mason of the Scottish Rite, thirty-second degree, and has been Master of Rose Cross Lodge of Los Angeles. In politics he is a Democrat, and has been the candidate of his party for Superior Judge, running against great political odds, and failing of election. He would make a most excellent Judge, being of balanced mind, of judicial temperament, and well grounded in legal science. He is still active and prosperous at the bar, and is universally esteemed as a man and citizen.

U. W. BROWN.

Mr. Brown was born November 24, 1860, in DeKalb county, Missouri. He came across

the plains with his parents in 1865 to Oregon, and thence, in 1867, to Colusa county, California, where he has since resided. He was raised on a farm; attended the public schools and worked in harvest fields in summer to defray his expenses at college in winter. He was graduated from Pierce Christian College in 1882, with the degree of B. S. et L.

Mr. Brown taught public school for four years. He was admitted to practice before the Supreme Court of this State in 1887. He located at Colusa, and has there practiced his profession ever since with unvarying success. He has one of the best working libraries in Northern California. He is identified with various business interests in Colusa county, and has been successful in business as in law practice. He was married to Miss Emma Maurice Lovelace in 1889. They have four children.

DANIEL W. BURCHARD.

Daniel W. Burchard is a native of the state of Missouri, and was born about forty-five years ago. His father was one of the pioneer ministers of the Methodist Church, and arrived in California with his family when our subject was a child.

Mr. Burchard obtained a good classical and legal education which enabled him to commence practice as soon as he arrived at his majority.

He located first in Hollister, San Benito county, where he was soon selected as city attorney. After a few years he felt impelled to remove to a larger field, and went to San Jose. There he soon entered upon a successful career at the bar. For six years he was connected with the district attorney's office, during which time the interests of the county, civilly, were faithfully guarded, and society also well protected from criminals. After leaving his official duties, Mr. Burchard opened up offices as a general practitioner, and in addition to civil business, achieved a state reputation as a criminal lawyer. Quite recently his practice outside of San Jose became so large as to compel him to remove to the Metropolis, with his family, consisting of a wife and four children. Continued success has attended him in San Francisco, and promises to follow him to the end.

JAMES H. BUDD.

Among the members of the bar of Stockton whose talents have brought them name and fame, none have been more distinguished than this gentleman. The ex-Governor was born at Janesville, Wisconsin, May 18, 1851, and is a son of Superior Judge Joseph H. Budd. He accompanied his parents to California in 1859, and since their location in Stockton, in 1860, he has always made that city his home. There he commenced his education, and from 1866 to 1869 attended the Britan College School. He next attended the State University and was graduated there in the class of 1873. The profession of law was from an early age marked out for him by his parents' wishes and his own inclinations, and in 1869 he commenced preparations therefor by reading in his father's office. His legal studies were kept up during the progress of his college course, and in 1874, the next year after graduation, he was associated in practice with his father for some time, and afterward with Judge Swinnerton. Since the dissolution of the latter partnership he has had no colleague in his law practice. In 1873-74 he served as deputy district attorney under A. W. Roysden. In 1876 he received the unanimous nomination of the Democratic convention for assemblyman, but declined. In 1882 he was nominated by the Democratic convention for congress, and undertook what was generally considered a hopeless race. It assumed a different aspect, however, under the vigor of his canvass, and when it was found, after election, that he was the fortunate candidate, many persons who thought that the Republican nomination meant election were surprised. He was, however, the first Democrat ever elected to congress from that district.

As a member of the national house of representatives, he served on the committee on education and the committee on invalid pensions. He introduced and carried through house bill No. 100, in the interest of the settlers on the Moquelemos grant, a measure which had been pending for years, and which was carried in the house only by earnest and untiring labor. He also secured an unusually large appropriation for that district, and the money for the dredger work on the Stockton channel. He brought about the passage of an amendment to the Indian appropriation bill, making the Indians amenable to state and territorial laws. He fought for and secured a special date for the consideration of the Chinese bill, of 1884, after its friends generally had considered it lost. He took an active part in the discussion on Chinese matters, on the interstate commerce bill, on the principal appropriation bills, and for fortification measures. The path of a congressman during his

James H. Budd

first term in attempting to secure recognition is generally a hard one, but many veterans did not come out of that congress with so good a record. During the progress of his term the State of California was reapportioned, and the newly constructed district of which San Joaquin county formed a part was so composed as to make it as strongly Democratic as it had before been Republican.

When the next congressional convention met he was unanimously nominated, and the convention adjourned but Mr. Budd felt that a proper regard for his own interests required that he should forego the certain re-election which his nomination implied, and declined to accept the proffered honor. This necessitated the reconvening of the delegates, and a second convention was called, resulting in another unanimous nomination of Mr. Budd, and the appointment of a committee to urge upon him the necessity of his acceptance. The committee failed of accomplishing its object, however, as Mr. Budd firmly declined to take the nomination. He has, however, always used his most earnest efforts for the success of the Democratic party. As chairman of the city and county central committees he carried San Joaquin county for the Democracy at the general election of 1888. He was six years a trustee of the Stockton City Library and made it a depository for ten years' issue of public books and documents. He gave up the position of trustee of the library in 1889 to accept the office of police and fire commissioner of Stockton. He became connected with the National Guard of California as a cadet at the State University and he was graduated with the rank of first lieutenant. Since then he has advanced rapidly to the front and has been major on brigade staff, lieutenant colonel on Governor Irwin's staff, major of the line and brigadier general.

Mr. Budd has taken an active and important part in nearly every movement of a public character concerning his section of the State for several years; yet it is in his profession as a lawyer that his real success has been made, and the general recognition of this fact has resulted in bringing him a practice so extended that an ordinary man could not handle it. His opinion, once given to client, has come to be regarded with much of the esteem of a verdict from a court, so successful has been his practice. He prosecutes his profession in all the courts of the land, having been admitted to the bar of the Supreme Court of the United States in 1884. He is a clear and rapid reasoner and sound in his conclusions. His strength of character is well exhibited by his declination of a certain re-election to congress —something that history is seldom called upon to chronicle. No man in Central California has a larger circle of warm personal friends than has James H. Budd. He was elected Governor of the State in 1894, as the Democratic candidate, when the Republicans elected every other State officer. His term ended in January, 1899.

The State has never had a more vigilant or industrious chief magistrate. He maintained a watchful interest over all public bodies and institutions, and was constantly visiting them, keeping himself well-informed as to all their needs, as well as regarded any delinquencies or irregularities.

It was to Governor Budd that applications for clemency were made in the cases of Durrant, found guilty of the "crime of a century," and Worden, convicted of murder in connection with the most serious railroad strike known to history. In those cases he was required to examine almost interminable records, and he discharged his unpleasant and arduous work with extraordinary patience and comprehension, his judgment leading him to commute the sentence of Worden from death to life imprisonment, and, in the other case, he refused to interfere.

His official papers were characterized by strength and exactness of statement, and generally evidenced his strong common sense and enlightened judgment. Upon his retirement from the chair of State, in January, 1899, he became the regular attorney for the board of State harbor commissioners, whose office is in the Ferry building, San Francisco. He has an office in the same place, the duties of this important attorneyship requiring him to spend much of his time in that city. He is attached to Stockton as he has always been, and there keeps his residence and follows actively his profession.

WILLIAM P. BUTCHER.

On the 14th day of February, 1854, William Preston Butcher was born on a small farm in Camden county, Missouri. He was the ninth of a family of fourteen children. When he was but two years old his father moved to Laclede county, and settled down in what was then the very heart of a wilderness. There was not another family living within an area of ten miles. He and the older sons cleared up and cultivated a small farm of some eighty acres of land. Here he lived with his family until the fall of 1860, when he died. He was a man of strict honesty and integrity. His word was his bond, and passed current among his friends and neighbors as such. He inculcated a love for truth and honesty in the minds and hearts of his family, and all who knew him honored and respected him. He was a member of the Baptist Church from early youth. He would preach to his neighbors at times, after the work on the farm had been disposed of. He accumulated considerable property by honest industry, and was, at the time of his death, in comfortable circumstances. Two of the three older sons then living had married and settled in the immediate neighborhood.

About this time, the great civilizer of the world appeared in that locality in the person of the school teacher. Up to this time there had been no schools of any description whatever. A school was opened in an old log cabin which had been used as a blacksmithy. It was floored with puncheons. It had but one door and no windows. It was furnished with

rude benches, made of logs split through the center, hewn down smoothly on one side, holes bored into the other, in which were inserted pins for legs. On these benches sat the pupils, without any support for their backs, and pored over Webster's Elementary Speller. It was in this hut, situated three miles from his home, that William attended his first school in the fall and winter of 1860. The term was but three months. This was the first school taught in that neighborhood. Prior thereto the farmers had given their entire attention to the cultivation of their little farms and the raising of live stock. Soon after this, and before another term of school was commenced, the great Civil War broke forth and threw the whole country into confusion and chaos. This portion of the country had been settled up with people from Tennessee and Kentucky. They had an inbred antipathy and hatred for the black man. And any one who dared to espouse his cause was at once ostracized, and

looked upon by his neighbors as even lower than the man whose cause he had espoused. But notwithstanding all this, and the fact that the father's brother, who lived in Wright county, owned slaves, this family remained true to the Union. And it was the only one that did so, in that whole neighborhood. As a consequence, it became despised by those who had previously been its strongest friends and best neighbors. They burned its fences to the ground, destroyed its crops and killed and stole its live stock, and threatened the lives of its members.

The three older brothers enlisted at the beginning of the war, in the United States Army, and served through the entire war. The oldest of the three was promoted to the rank of major. He was wounded in the right arm by a bullet from the enemy in an engagement on the battle-field.

While these were fighting the battles of the Union on the field, the mother and children were fighting the battle of cold and hunger at home. The mother sheared the sheep, carded the rolls, spun the yarn and wove it into cloth, and made clothes that covered her children during these four long and bitter years of war. The trials and hardships of that family during that period, where might made right, where the struggle for existence was against barbarous force, where there was no law to appeal to for the redress of wrong, no human hand to be lifted in behalf of this poor family, or heart to lend its sympathy, cannot be told in this place. But alone in the midst of murderous force, where the evil passions of men went unrestrained, did this heroic woman fight the battle, grander and nobler than ever fought on the field of carnage.

Of course, there was no such thing as even a thought of school during these times. And even after the war ended, there remained in that country a horde of skulking desperadoes, known as "bush-whackers," that continued to terrorize the country and prevent the return of people to the pursuits of peace. As a consequence, William did not go to another school until he was fourteen years of age. By this time he had practically forgotten the lessons learned in the former term out of Webster's Elementary Spelling Book, and had to start anew. He attended one other term at this age, of three months. After this he had the entire care of the family, his older brothers, who had been up to this time single, became married, and settled down in the neighborhood. Though he did not attend school any more while at home, he studied night and morning. He would build a fire of logs in the great fireplace at night, and, after the rest of the family had retired to sleep, he studied his books by the light of the fire. In this manner he succeeded in accumulating sufficient education to pass an examination for a certificate to teach school. He taught his first term at the age of eighteen years, in the same vicinity where he was raised. Many of his former playmates attended this school. From this time forward he taught from three to six months a year, and attended school the remainder of the year, studying the higher branches of education for a period of about ten years. He also studied law during this period, and was admitted to practice in that profession in all the courts of record of that state in 1882. His health beginning to fail, he was advised by his physicians to seek out-door employment in a more even and milder climate. Soon after this he came to California. Having regained his health, he located in Santa Barbara on the 16th day of October, 1886, where he has ever since lived, and practiced his profession.

On the 31st day of January, 1897, Mr. Butcher married Miss Laura Hurtzig, a young lady who was born and raised in Forest Hill, Placer county, California. They have two children, a girl of eleven and a boy of nine years.

Mr. Butcher has always been a Republican in politics. He never held an office in his life, nor received a penny which he did not earn. He has a cheerful and happy disposition, and is universally liked by all who know him intimately.

W. C. BURNETT.

This is one of the surviving sages of the early bar, and merits a much more extended notice than our knowledge and recollections can furnish forth. He is still at the bar in San Francisco, and in good preservation of mind and body.

We first saw Wellington C. Burnett in Sacramento, at the legislative session of 1856; and again at the session of 1857. The legislature met annually in the fifties, and a State senator's term was two years. Mr. Burnett was senator at those sessions, representing Yuba and Sutter counties. He came to this State at a very early day, and located first at Marysville, where Stephen J. Field was then at the head of the bar. He became one of the most prominent attorneys, acquiring a great business, and he was sent to the State senate by the newly organized Know-Nothing, or Native American, party. A man of much natural energy, he was in the senate a useful, hard-working member. About two years later he removed to San Francisco, where he has always since lived and practiced. The men he then met at that bar are, with a few exceptions, no more. We well recall his professional activity through the years that followed. In 1870 he was elected city and county attorney, and was re-elected three times, holding for four terms, or eight years; a period exceeding that of any other incumbent of the office before or since. During the last four years of this time he was also a New City Hall commissioner ex officio, and for the last two years also an election commissioner, ex officio.

Many men have been prepared for the bar in Mr. Burnett's office, some of whom have attained both fame and fortune. Of these latter, in conspicuous view at the metropolitan bar, is Colonel E. F. Preston. Fisher Ames was also with him for some time, but was an admitted attorney then.

About the year 1895 Mr. Burnett was called to New York City, to attend to some law business which he thought would occupy only a few weeks' time. While engaged with it, he was employed by persons in that city to attend to other matters, and this was followed by other successive professional engagements, which altogether kept him away from home, and busy in the great city for over two years.

Mr. Burnett is a man of family. His children are grown, two of them members of the bar, one of them in practice with him. The wife of his youth is living, and in good health. Mr. Burnett is a native of Connecticut, and seventy-one years of age.

R. CAHILL.

Robinson Cahill was born on a farm in Carroll county, Ohio, April 28, 1828. His paternal ancestors came from the Emerald Isle, while those on the maternal side were from Scotland. He had a fair education for those times in common schools, with an academic course, the latter received at Hagerstown, Ohio, not far from his birthplace.

Having a desire to study law, but being without means, he engaged in school teaching, meanwhile studying for the legal profession as opportunity offered. In 1855 he was united in marriage to Mary M. Cummings, daughter of Dr. Thomas Cummings, a celebrated physician of that part of Ohio. Shortly afterwards Mr. Cahill, with his young bride, emigrated towards the setting sun, locating at Kirksville, Missouri. Here, in company with a Mr. Waldon, he published the *Kirksville Enterprise*, the first newspaper of that county. In 1858 he was licensed to practice law in all the courts of record of the state, and soon removed to Cedar county, where he rapidly acquired a lucrative practice.

Soon, however, the civil conflict disturbed all peaceful pursuits, and the horrors of war spread over the land. Being naturally averse to scenes of bloodshed and carnage, and believing in the peaceful settlement of all questions through the courts or by arbitration—though he sympathized with the South—he determined to take no part in the war. Accordingly, in 1863, he sent his family to Ohio, and joining an emigrant train, he crossed the plains and reached California without any serious mischance, save the loss of his favorite horse, which he traded for a yoke of oxen.

At Liberty, San Joaquin county, he taught school for two years, and at the close of the war he returned to Ohio, and with his family again took up his abode in Missouri. He now settled at Doniphan, Ripley county, where he practiced his profession for many years with marked success. Here, in 1869, his wife died, leaving him two daughters, aged seven and nine years.

In 1872 Mr. Cahill was elected to represent his county in the general assembly of the state. He was re-elected in 1874, and again in 1876, by a largely increased majority. At the close of his third term, his health being impaired, he removed to Windsor, Henry county, but

his stay there was brief, and in 1881 he removed with his family to California, settling at Los Angeles, where he has since resided. He did not, however, resume the active practice of his profession but is spending the evening of his life in retirement, looking after his private business interests. His oldest daughter, Mary A. Cahill, was married to Mr. Ulrich Knoch, the publisher of this History, August 2, 1884.

Mr. Cahill still maintains his interest in the "bench and bar," and has many acquaintances among the legal fraternity. Several years since he served on the grand jury, and was the means of calling attention to the over-crowded condition of the penal institutions of Los Angeles county. In politics he has always been a staunch Democrat of the old school.

JOHN T. CAREY.

General Carey was born in Clay county, Missouri. His father, the late R. S. Carey, of Sacramento, came to California in 1850, bringing his family. They first settled in Solano county, thence removed to Yolo county, where the father acquired extended land holdings. In 1860 the family moved into Sacramento city, where they have ever since resided.

R. S. Carey early became interested in agriculture and stock raising, and was one of the founders of the State Agricultural Society, and was president of that society for a number of years. General Carey laid the foundation of his education in the public schools, but completed his education at the Pacific Methodist College. Following the bent of his ambition to become a lawyer, he entered the law office of Coffroth & Spaulding. After his college course was completed, and in February, 1869, he was admitted to practice by the District Court, and afterwards by the Supreme Court of the State. He holds certificates from all the Federal courts, including the Supreme Court of the United States. Shortly after he was admitted he formed a copartnership with Mr. Charles T. Jones, and the two young men entered upon the practice of their profession, and soon took and maintained a prominent place at the bar of Sacramento.

General Carey was deputy under Attorney-General Jo. Hamilton in 1866-67, and resigned this position to form a copartnership with the late Judge John W. Armstrong, which partnership continued until the latter was appointed Superior Judge of Sacramento county. Shortly after this our subject was elected district attorney of Sacramento county, a position he filled with fidelity and distinction. While in that office one Jo Hurtado, who had been previously convicted of murder in the first degree, and was under sentence to be hanged, the prosecution having been by information instead of by indictment, sued out a writ of error to the Supreme Court of the United States, contending that section 8 of article 1 of the Constitution of 1870, authorizing prosecutions by this method, was in conflict with and prohibited by the fifth and fourteenth articles of amendments of the Constitution of the United States. General Carey was employed by the State to defend the practice by the State constitution, and he secured a decision of the Supreme Court of the United States establishing this method of prosecution, since which time many of the states in the Union have made a similar provision. (110 U. S., 115.)

General Carey always had a military inclination. He was connected with the State militia from his early boyhood days, and in furtherance of his ambition, and in recognition of his past service, Governor George Stoneman appointed him brigadier-general of the Fourth Brigade, N. G. C., which position he held for several years. Whence his title.

In the election of 1884 he was the candidate of his party for State senator, and, although Sacramento county usually went 1700 Republican majority, he came within a few hundred votes of election.

In November, 1886, President Cleveland appointed the General United States attorney for the Northern district of California. He was immediately confirmed by the senate, and assumed the duties of the office on the 6th day of that month, and served two years under President Cleveland, and two years under President Harrison. In November, 1890, he sent in his resignation, and in accepting it, Attorney-General Miller paid him a very high compliment. It is said by those familiar with the history of this office from the earliest days, that there was not only a greater volume of business done, but that the character of the litigation was of unusual importance, during these four years. The titles to the Las Pulgas grant, the Corte Madera grant and of many other smaller grants, were litigated or settled. The infringement of the government in the use of what was claimed to be the Shield Caison Gate, at the Mare Island dry dock; the fraudulent Chinese certificate cases known as the Boyd and Ciprico cases; the fraudulent survey cases, known as the Benson cases; the fraudulent timber land entries, known as the Beach cases; the Terry case and the Neagle habeas corpus case, and many others, needless to mention, all came under his charge. The latter case was pre-eminently the one of greatest importance historically, because of the facts leading up to it, the personages connected with it, and the principle involved.

General Carey entered upon the practice of his profession in San Francisco after retirement from office, and has been engaged in private practice in that city ever since.

MELVIN C. CHAPMAN.

Melvin C. Chapman was born in Westfield, Illinois, on the 5th day of September, 1831, in which state he resided up to 1869, the year of his removal to California. He is able to trace an honorable ancestry back to the days of Charles the First, at which time some of his ancestors, under Oliver Cromwell, fought against the king. In 1660 Robert Chapman emigrated from England and settled in Sa-

Melvin C. Chapman

brook, Connecticut, and the homestead acquired by him at that time still remains in the possession of his descendants.

Melvin C. Chapman is one of the direct descendants of Robert Chapman, many of whom were engaged in the war for American Independence, and the war of 1812, and also in the late Civil War; others from remote colonial times have occupied high judicial positions, while others were engaged in the ministry and in mercantile and commercial pursuits.

Mr. Chapman began the study of the law in this State in 1872, having acquired at that time by his own exertions a competency. Unexpected financial reverses having overtaken him two years later, he was compelled for the time being to turn his attention to other business in which he was successful. Upon a renewal of his law studies he was admitted to the bar of the Supreme Court of this State in 1884. On his admission to the bar he immediately entered upon the practice of his profession in Oakland, California, where he had resided for ten years, and where he has ever since lived and practiced. The reputation which he had acquired as a successful business man at once brought him a remunerative practice, and the able and faithful manner in which he handled all business intrusted to him quickly gave him standing as an able and successful lawyer. His reputation in this regard has continually increased with his work, until he is now regarded as one of the ablest and most successful lawyers in the State. His work in the profession has not been confined to any special line, although his remarkable success in criminal cases has brought great demands upon his time in this class of service. He is frequently employed on behalf of the people in difficult criminal cases, and in this class of work he is equally as formidable as when engaged in the defense. His eminent ability in criminal cases has long been recognized, and it is safe to say that in this class of work he has no superior, if he has an equal, in the State. He is the attorney for several important corporations whose business is extensive, and this makes large demands upon his time, and yet he turns a deaf ear to no poor person who has a just cause and asks his assistance.

Mr. Chapman is of prepossessing personality, and has a rich and powerful voice. He is respectful in his conduct toward the court, and courteous and generous to his opponent. He talks easily, always to the point, and is laconic and forceful in expression. He has a keen sense of the ridiculous, is witty, quick at repartee, and is master of sarcasm. He is always earnest in the conduct of his cases before the court, and is often intensely impressive, and always effective before a jury. He is yet in the prime of life, and in active work.

In 1888 he was elected by a three-fourths vote of his assembly district to represent it in the legislature. Upon the expiration of his term of office he was tendered a unanimous nomination for a second term, but declined to be a candidate for re-election.

In 1891 he was elected mayor of the city of Oakland by the largest Republican majority ever given to a candidate of that party for the office of mayor.

In 1890 a large majority of the congressional delegates to the congressional Republican convention of that year earnestly requested him to accept a nomination for congress, to represent the Third congressional district of California in the house of representatives. At this time the Hon. Joseph McKenna, who was then representing the Third district, was, and for a long time had been actually engaged in his congressional duties at Washington, to the extent that he had wholly neglected his candidacy for a re-nomination to congress. Mr. Chapman thought that under these circumstances Mr. McKenna's devotion to the public interest should not operate to defeat his re-nomination, and therefore declined to become a candidate to succeed him. Mr. McKenna accordingly received a re-nomination.

Mr. Chapman is married and has one child, a son. His wife is the daughter of Mr. and Mrs. W. W. Childs of Oakland, California.

THOMAS L. CAROTHERS.

Thomas Langley Carothers is the son of James H. and Margaret Barnes Carothers, and was born at Carthage, Hancock county, Illinois, September 26, 1842. He "crossed the plains" with his father's family in the spring of 1853. His father settled at Stony Point, Sonoma county, in the fall of that year, remaining there until 1857. Thomas in the meantime attended the neighborhood school and worked on his father's farm. In 1857 the family moved into Petaluma, where they resided until the spring of 1859, Thomas attending the public schools of that place. In the spring of 1859 the family moved to Sacramento City, where the son continued his studies in the public schools until the fall of 1861. At the close of the regular term of the High School of Sacramento, in September of that year, the young man entered the law office of Harrison & Estee of that city. He studied law until January, 1862, when the family returned to Petaluma on account of the great flood then at Sacramento. On arriving at Petaluma our law student entered the office of Hon. George Pearce, where he continued his studies until October 5, 1863. He was then admitted to the bar by the Supreme Court of the State, having become of age only ten days before.

Mr. Carothers began the practice of law in Petaluma. He filled the position of deputy district attorney of Sonoma county for two years, under Hon. William Ross. In May, 1866, he removed to Ukiah City, Mendocino county, where he has practiced his profession ever since. In December, 1866, he was married to Miss Lucy Pierson, daughter of the late Dr. E. M. and Harriet Pierson. Since his admission to the Supreme Court he

has been admitted as an attorney of the United States Court and District Courts at San Francisco. In 1867 he was appointed a notary public by Governor Low, which position he has held ever since. He has been district attorney of Mendocino county for two years, and has been for several years a United States commissioner.

In 1884 Mr. Carothers was the nominee of the Republican party for congress in the First congressional district of this State. The district had been giving about two thousand Democratic majority, and yet he came within one hundred and forty-five votes of election, his Democratic competitor being Hon. Barclay Henley. In 1888 he was one of the Republican nominees for Presidential elector for the State of California, and General Harrison carrying the State, Mr. Carothers was elected and discharged the duties of the position. He was a trustee of Ukiah City for ten years, and during that time was president of the board of trustees. For several years he was the law partner of Hon. R. M. McGarvy, who was later Superior Judge. He has acquired a large and lucrative practice; and, particularly as a criminal lawyer, he has won great reputation. In 1880 he was employed by the county to assist in the prosecution of the famous "Mendocino outlaws," and he convicted every one of them.

In the case of Albion River Railroad Company vs. William Heeser, reported in the 84th volume of our State Supreme Court Reports, at page 435, the court, following the argument of Mr. Carothers on his brief for respondent, decided (and it was then so held for the first time in this State), that a railroad company could first go on and take land for railroad purposes, and have the land condemned afterwards, with no other liability for damages than such as the company would have incurred if it had secured condemnation before taking possession.

In January, 1896, Mr. Carothers lost his wife. He afterwards married Mrs. Lydia I. Reeves, a widow, a most estimable and intelligent lady, who had been one of his best clients. He remarked to his friends at the time that he had "lost a good client but gained an excellent wife."

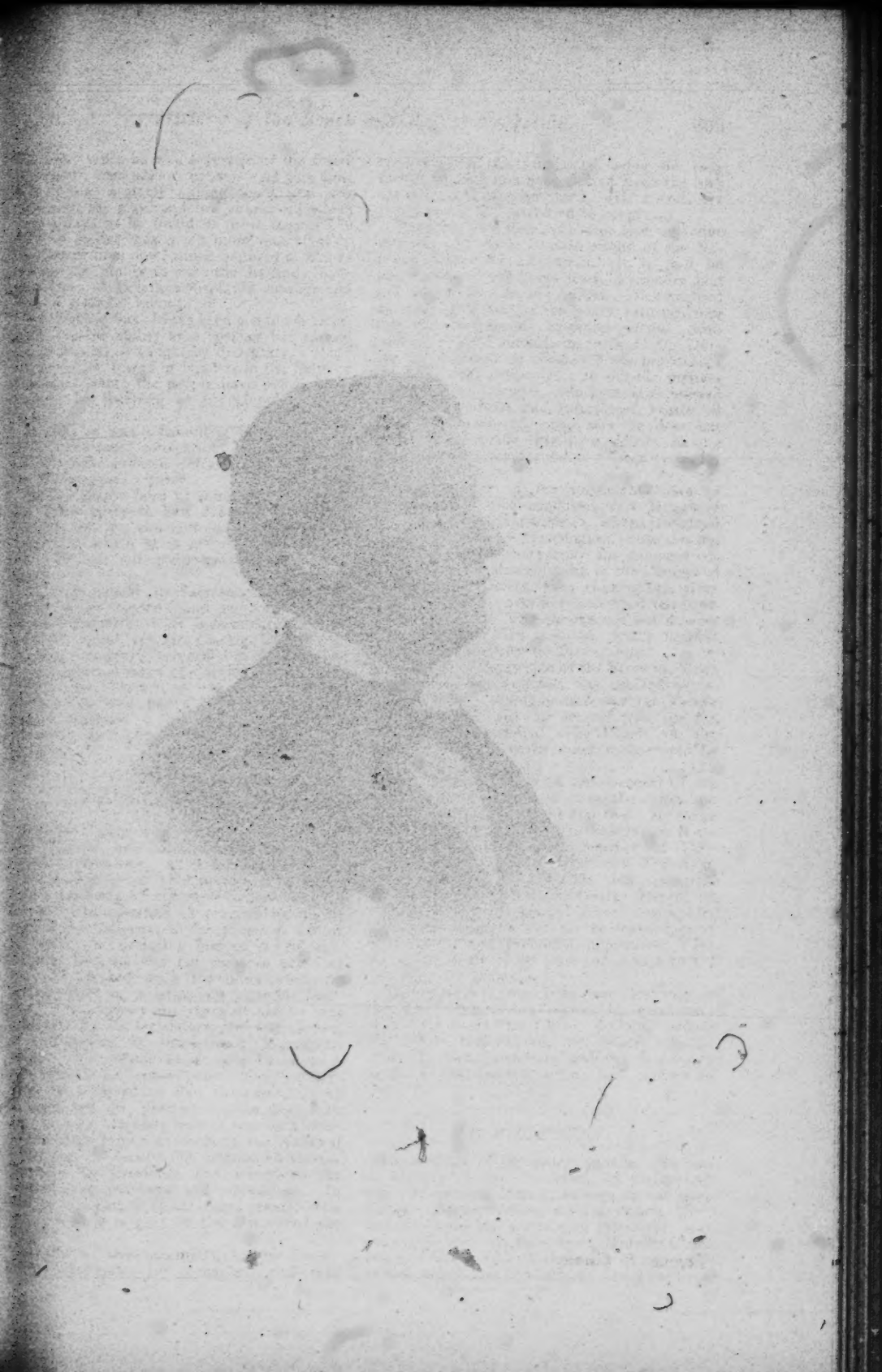
Mr. Carothers is now referee in bankruptcy for Mendocino and Lake counties. He is also mayor of Ukiah, elected as a Republican in a strong Democratic town.

R. M. CLARKEN.

R. M. Clarken, who is a prominent attorney at the Sacramento bar, was born in Charleston, S. C., but while quite young removed with his parents to Missouri. He was sent to Kentucky to school, and received a classical education at the famous Jesuit College at Bardstown. In December, 1860, he came to California, where he has ever since resided. Immediately thereafter he began the study of law, although he did not commence active practice at the bar for some years later. Like many who have entered upon a successful law career, he spent some years as a teacher in the public schools, and later was a professor in St. Ignatius College, at San Francisco; and thereafter

became an editorial writer and leading reporter on the great San Francisco dailies.

He was elected to the twenty-first (1875-76) session of the legislature, where he was an active, industrious and leading member. Often during this session his ability as a parliamentarian and his recognized fairness compelled him to act as presiding officer of his house.



Thomas J. Clunie

For many years he was a Justice of the Peace at Folsom, Sacramento county. At this time Folsom was a lively mining town, and was filled with the good and bad characters which were always to be found in those days. The office of justice was much more important in those times than now, and it required a man of courage and ability to meet the demands made upon him. Mr. Clarken displayed courage and made a splendid record.

Mr. Clarken has always been a staunch Democrat, and his ability as a speaker has caused his services to be sought by that party. There are few cities, towns or hamlets in the State of California where the people have not had the pleasure of listening to his eloquent utterances.

In 1879 he was a candidate for delegate to the constitutional convention, but, like others on his ticket, suffered defeat at the hands of the Workingmen's party.

He has always been prominent in the councils of his party in San Francisco and Sacramento, and few conventions are held in Sacramento in which he is not the presiding officer. No one will contest with him for the honor.

While his party in Sacramento county is greatly in the minority, and one seeking office on the Democratic ticket is considered a martyr to the cause, yet Mr. Clarken has on several occasions nearly succeeded in being elected to the important office of district attorney.

While Mr. Clarken is engaged in general law practice, and has a lucrative civil and probate business, he prefers criminal cases. His ability as a pleader before juries justifies his choice.

THOMAS J. CLUNIE.

General Clunie was reared in Sacramento and received his education at the public schools of that city. After finishing the high school course he received private instructions from a graduate of Harvard College, studied law and was admitted to practice before he reached his majority, under a special act of the legislature, declaring him of lawful age, when, in fact, he was but eighteen years of age. He entered upon the practice of the law and built up a large and lucrative business. When twenty-one years of age he was nominated for the legislature, and was elected, as a Democrat, in that strong Republican county. His friends assert that he made a good record for some years there. Afterwards he removed to San Francisco, where he continued the practice of the law with great success. In 1884 he was sent as a delegate at large from California to the National convention at Chicago that nominated Grover Cleveland for President, and served on the committee on platform and resolutions. In 1886 he was elected to the State senate. His record there is a part of the history of the State.

In 1888 he was nominated by the Democratic convention for congress, and was elected by a clear majority, being the only Democrat that was ever elected from the fifth district, as then constituted. His friends are justly proud of his record in congress.

From boyhood General Clunie took an active interest, and was a staunch friend of the National Guard of California. It is said he had two-inch heel boots made, to render him tall enough to join the militia. He remained an active member for ten years, retiring from the State militia as brigadier-general, commander of the Fourth Brigade, N. G. C. During all this time he continued the practice of the law. His investments in outside matters were to good purpose. He became interested in business affairs and enterprises, nearly all of which prospered, until now he does but little law practice, his own affairs having grown to such magnitude as to require nearly his entire time.

Among some of the important cases in which he has been employed were Hoagland vs. the City of Sacramento, when Hoagland et al., residents of Washington, Yolo county, sued the city of Sacramento for damages occasioned by the straightening of the channel of the American River, thus causing the river at high water to overflow and flood the town of Washington. The damages claimed were about $200,000. The case was finally decided in favor of the city of Sacramento.

The case of the people of the State vs. Miles et al., involving $150,000, was decided in favor of Miles. Another case was the People vs. Laura D. Fair, the second trial for the murder of Crittenden. The People vs. Tip McLaughlin, and many other cases could be mentioned.

Since being declared of age, General Clunie has canvassed the State in every campaign, as a Democrat, except the last two. He made the nominating speech when Washington Bartlett was nominated for Governor of California; also as senator from San Francisco, he was selected to place his close, personal and political friend, Hon. George Hearst, in nomination for the United States senate. His record in congress and in the legislature is well known and gratefully appreciated. He has given freely of his time and money to aid the cause of Democracy.

The General is one of the best liked men in the State, and no one regrets his great success. He owns the Clunie Building, where his offices are located, and other valuable estate in San Francisco, and the fine opera house in Sacramento, which was opened in 1885.

R. P. CLEMENT.

Here is one of our oldest friends. He was in practice in San Francisco, in partnership with the veteran, Merrill, as long ago as 1859. Captain Martin White, who, a decade later, abandoned the law for mining enterprises, was associated with the firm, being Merrill, Clement & White. And all three are living today, in fair health and strength, in San Francisco.

Captain White is the only one of the three whose residence in the metropolis has been interrupted. He practiced law in Virginia City, Nevada, in the flush times of "Washoe." We met him there in 1863. He was in partnership with Dighton Corson, now a Justice of the Supreme Court of South Dakota. After he turned to mining, Captain White had varying fortunes. Among his discoveries was the famous mine named after him. The Martin White Mining Company is still operating their property, the mine being at White Pine, Nevada, and their main office in San Francisco. We had to make this allusion to the kind old man, although he is not of the bar, but is still "mining" in his time-worn age.

Roswell P. Clement is a native of New York state, born in 1820. (That year, 1826! How many great men in that year left the world—Adams, Jefferson, and Lindley Murray among them. And this History will show how many bar leaders of California then came into being.) Mr. Clement was a member of the San Francisco board of supervisors for two years and a half, in 1865-67—the terms of the members having been extended for six months by act of the legislature. He became the regular attorney of the San Francisco Gas Light Company, to succeed Henry H. Haight, when that prominent lawyer was elected Governor of the State, in the fall of '67. Mr. Clement held this important position for about eighteen years. The most noteworthy and important work of his life, especially in its relation to the public interest, was in the "expansion" of Golden Gate Park. The idea of extending the public reservation for a park through the long stretch of sand-dunes until it reached the ocean, including the two hundred-foot boulevard, originated with him, when a member of the board of supervisors, and there is reason to believe that but for his patient and arduous efforts in that behalf, that redeemed region, now so inviting, would present a park of not more than three hundred acres.

Mr. Clement's year of arrival in California was 1853. His father, Jabish Treadwell Clement, was a millwright by trade, in New York.

Mr. Clement is a married man, without children. At the age of seventy-four years he is still in practice, besides owning some mining property. The interests of the Martin White Mining Company are in his keeping. He has been a clean man always—in his profession, in politics, and in all the relations of life.

MOSES G. COBB.

Moses G. Cobb was born in Princeton, Worcester county, Massachusetts, November 24, 1820. He graduated from Harvard College in 1843, and at the Dane Law School (Harvard) in 1846. He commenced practice in 1846 in Charlestown, Massachusetts, now a part of Boston, and subsequently practiced in Boston to 1861; from 1862 to 1866 in Stockton, California, and since 1866 in the city of San Francisco.

Mr. Cobb has been a very active man in his professional career, covering now a period of fifty-four years. Though turning aside in the earlier years of his professional life for other activities, he has always remembered, so he says, that "the law is a jealous mistress, and will brook no rival;" and, hence, for the last fifty years, at least, he claims to have devoted sixteen hours a day, excepting Sundays, to its study and practice.

And he has been a successful practitioner, if the winning of the numerous cases entrusted to him is any criterion. He has the gift of an intuitive perception of the salient points of a given case, and an indomitable energy and perseverance in pushing them to a successful result.

In Massachusetts, after coming to the bar, he met and practiced with such lawyers as Benjamin Curtis, Rufus Choate, Caleb Cushing, Benjamin F. Butler, and others prominent in the profession. He studied law under Joseph Story and Simon Greenleaf, as professors at the Dane Law School, Harvard University, and practiced before Judge Story, United States Circuit Court, and Chief Justice Shaw, Supreme Court of Massachusetts. He knew Daniel Webster personally, and had many conversations with him when a student—a classmate of his being at the time a student in Mr. Webster's office. He is probably the only living link—certainly in California—between the lawyers of that generation with whom he practiced in Massachusetts and those of the present day.

His tenacity of purpose has been another prominent factor in his professional success. He often mentions to his brethren at the bar the case of Oakes vs. Munroe, reported in 8 Cush. Rep. (Mass.), 1851, to illustrate the virtue of holding on. He in that case attacked a landlord and tenant notice, which had been the form in use in Massachusetts for at least fifty years, because the form contained the word "immediately"; whereas, he contended, that the word was misleading and out of place; that the exact time of grace, allowed a de-

linquent tenant, should be stated in the notice employed to work a forfeiture of the delinquent tenant's term, although no harm had ever come to any tenant, as to the form in use, from the objectionable word, so far as was ever known.

His brethren at the bar ridiculed his contention through three courts, there being two appeals. On submitting the case on final appeal in the Supreme Court of Massachusetts, after a labored argument on his part, the opposing counsel simply moved for damages against the appellant for the prosecuting of a frivolous appeal. The Massachusetts Supreme Court, however, sustained the appellant's contention, in an opinion of unusual length for that court, and the case became, and has continued to be, the leading authority on what a landlord and tenant notice *in limine* should contain in order to work a forfeiture of a lease.

During the time he was located at Stockton he tried many important mining cases in the mining counties of Calaveras, Tuolumne and Stanislaus, in which he was successful.

Soon after coming to San Francisco he commenced the action of Samuel Brannan vs. The Central Pacific Railroad Company, and its directors, in the Fifteenth Judicial District Court of San Francisco, charging the directors with fraudulently appropriating to their own individual use the numerous and valuable subsidies and franchises granted the road by the Federal and State governments, and by several counties and cities in this State.

The complaint was published, *verbatim et literatim*, in the *Sacramento Union*, the next morning, after the same was filed in the Fifteenth District Court, city and county of San Francisco, taking up every inch of space of that issue of *The Union*. One thousand copies of the complaint were printed in pamphlet form, and in less than three months, from July, 1870, every copy of the thousand had been distributed to members of the bar of the State, on special request for the same.

The case was subsequently amicably settled; but, as after events proved, it left dragon's teeth for the company and its directors.

He was *magna pars fui* in the celebrated case of Cox vs. McLaughlin. This case was in the courts twenty-two years. It resulted in the killing of McLaughlin by Cox, which was adjudged justifiable, and in an ultimate judgment against McLaughlin in favor of Cox, in 1888, for $112,000.

Another case of his was somewhat celebrated, being the breach of promise case of Moore vs. Hopkins, the millionaire, which resulted in a verdict against Hopkins of $75,000. This judgment was ultimately settled. It was said, at the time the judgment was recovered—1887—that the same was the largest ever before recovered in the United States in such a kind of a case.

He has been engaged in many important cases in the Federal Courts, notably the Broderick will case—Keily vs. McGlynn, reported in 82 U. S. Rep.—in which the United States Supreme Court held that six years laches on the part of the heir of a descendant, though absent beyond seas and ignorant of the fraud, gives validity to a forged will.

He was engaged in several cases involving title to Mexican land grants; notably the San Jacinto Sobrante grant, in San Bernardino county, this State, considered then enormously valuable on account of its tin deposits.

Socially, Mr. Cobb is a very companionable kind of a man; ever cheerful, ever ready to tell a good story, or to listen, with equal readiness and keen enjoyment to the story told by another.

He is noted for his kindness toward, and ever patient readiness to help, the younger members of the profession, giving counsel, and often trying cases for them, without asking or expecting reward.

For fifty years last past he has been an educator in the profession and practice of the law, having had from one to six students all the time in his office. Anson Burlingame, the first American minister to China, was a student with him, and was his first student in Massachusetts.

General Cobb is still in active practice, having been so long in the profession, he says, it would surely kill him to stop now.

WILLOUGHBY COLE.

Willoughby Cole, son of Cornelius Cole, was born at Sacramento, California, November 20, 1857. He is a graduate of Cornell University. He lived in San Francisco in 1865-67; 1873-74, and 1878-79. He then spent two years in Arizona, in mining pursuits and journalism, and returned to San Francisco in 1882. He was admitted to the bar of the Supreme Court of California on August 9, 1884. He practiced with his father until 1887, when he removed to Los Angeles. He was United States district attorney for the Southern district under President Harrison, assuming the office February, 1890. Since the end of his official term he has been engaged in the practice in Los Angeles, in association with his distinguished father.

AUGUST COMTE.

We come upon a great, suggestive name, worthily borne by a San Francisco counsellor—worthily borne, indeed, as our other friend of the same bar, Fisher Ames, worthily bears his. But neither Mr. Comte nor Mr. Ames is related to either of the masters who first made their names illustrious.

Our August Comte was born in St. Louis, Missouri, September 25, 1842. His parents were French, his father, who also bore the same name in full, being a saddler, and settling with his family early in the fifties at Sacramento, California, where he amassed a snug competence in his calling. We recall now his profitable saddle store in the capital city, and his stout figure at the front, in the days when we had the honor of being a school fellow of his since noted son.

Mr. Comte received his early education in the public schools of Sacramento, including the High School, passing from the latter, the brightest student, as we can testify, to Harvard University. He was duly graduated, and returning home, prepared for the bar, and was admitted to practice by the State Supreme Court. He had not got fairly started in the profession when he was elected as a Democrat to the assembly. He served in the session, beginning December 2, 1867, and ending March 30, 1868, C. T. Ryland of San Jose being the speaker of the house. At the next legislative session, 1869-70, he took his seat as State senator for Sacramento, having defeated, in a Republican county, the Republican candidate, Lauren Upson, who was the veteran editor of the old Sacramento *Union*. His senatorial term also covered the session of 1871-72.

Mr. Comte was in the State senate when he determined to remove to San Francisco, and abandon his profession. Mr. Edward Tompkins of Alameda county (q. v.) hearing of Mr. Comte's determination, and being professionally ill at ease about it, took occasion in a speech on the floor of the senate to administer a public rebuke to his young friend.

Senator Tompkins' speech, in which he "pitches into" Mr. Comte for abandoning his profession, may be found in the old Sacramento *Union* in February, 1872.

But the eloquent rebuke did not change Mr. Comte's mind. He had tired of law, and turned to merchandise and trade. He removed to San Francisco, in 1873, became a partner in the house of F. Chevallier & Co., and pursued the wholesale liquor business for some seven years. We remember calling on our old schoolmate, in his Front street store, in 1874. His law books were not parted with, but piled on the floor in a back room. But he said, incidentally, in conversation, "I can make more money in practicing law." He had put $10,000 in cash into the business of F. Chevallier & Co.

In 1877 Mr. Comte, in association with Governor Perkins, Dr. Brigham and many others, organized the Franco-American Bank, Mr. Comte taking the position of business manager. This bank disincorporated after a brief life of two or three years, and Mr. Comte, in 1881, resumed law practice in San Francisco. He speedily acquired a good practice, one cause being his fluent speaking of his father's tongue and his large French acquaintance. A fine scholar in languages and classics, an able lawyer, he does credit to his French extraction. He is one of the very few good American lawyers of French parentage. In fact, Delmas is the only other one in this State whom it is easy to recall. As a rule, when our good lawyers are not American they are either Irish or English. Now and then we strike the Hebrew, as in Benjamin, and the Scotchman as in Alexander Campbell.

Mr. Comte's law business is principally probate. He has more business in that line than any other attorney in the State. He has been for twenty years the attorney for the French Bank of his city. He is, however, no specialist, but a broad-minded, complete lawyer. He has been twice married, losing his first wife some years ago. He has several children. He was a member of the board of freeholders which framed the proposed city charter in 1880; a member of the board of education in 1895-96, and is now a member of the board of supervisors of San Francisco.

HENRY CONNER.

Henry Conner is a native of Illinois. He was born in Adams County, near Quincy, on the first day of January, 1851, and lived on the farm, the place of his birth, till grown. With him like all farmers' boys, it would be difficult to tell when he began working on the farm, for they commence so early in life that they do not remember.

He worked during the summer time, and winter, too, for that matter, but during the winter attended the district school in the neighborhood the portion of the short term when nothing else could be found to do. In addition to the instruction obtained at the district school he studied enough more at odd times to fit himself for entrance to the Illinois University, where he spent two years. From there he went to Oberlin College at Oberlin, Ohio. At this institution he graduated in 1878 with the Bachelor's degree. After leaving Oberlin he studied law in the office of A. E. Wheat, at Quincy, Illinois, but was not admitted to the bar till after coming to California. He arrived at San Bernardino in November, 1881, and was examined by the Supreme Court and licensed

to practice law at the opening of the April term of the Supreme Court in 1882 at Los Angeles. He immediately opened an office at San Bernardino, where he has been engaged in the practice of his profession ever since.

On April 7th, 1885, Mr. Conner married Mary G. Buford, a native of Tennessee. In 1888 he was elected district attorney of the

T. C. Coogan

county of San Bernardino and served one term. Since he left that office he has served five years as a member of the County Board of Education of San Bernardino county, and is now a member of the Board of Education of the city of San Bernardino.

T. C. COOGAN.

Mr. Coogan has been a busy man at the San Francisco bar for twenty-one years. He came from his native state, Connecticut, where he grew to manhood, and practiced law for seven or eight years. He was born on October 8, 1848, and is a graduate of Harvard Law School, of the class of '71. In that year he was admitted to the bar by the Connecticut Supreme Court. He was a member of both branches of the legislature of that state at an early age, first, of the lower house, then of the senate, serving two years in each body, representing in part Hartford county. He came to San Francisco in 1879, and has practiced law there ever since, having his residence in Oakland during all of that time. He was attorney for the board of State harbor commissioners for the considerable period from 1881 to 1889. He finally resigned the place. For many years past he has been, and still is, general counsel for the board of underwriters of the Pacific. He is of Democratic politics.

Mr. Coogan is well known and generally esteemed in the great communities on both sides of the bay. With the profession he is in general favor. The courts cherish for him unqualified respect. Ready and indefatigable in his professional business, scrupulous and chivalrous in dealing with others, of a sincere and cordial nature, there are few men of more agreeable, and, at the same time, more unpretentious, bearing.

Mr. Coogan married, in New York, shortly before removing to California, Miss Mary E. Watson, a Connecticut lady. There are four children of the union.

FRANK L. COOMBS.

Hon. Frank L. Coombs, United States attorney for the Ninth Circuit, with office at San Francisco, was born in Napa county, on his father's farm, in the year 1853. His father was Nathan Coombs, a noted man in the early history of the State, who cultivated a large and fertile tract of land in Napa county, and took an active part in politics. He was a member of the assembly in 1855 and again in 1860. The elder Coombs died in 1877, at the age of 51, leaving a large family. He had been actively identified with the agricultural interests of the State, and with the State Agricultural Society for many years. A son of his, who bore his name in full, and whose profession was that of a farmer, died at Napa in the year 1896, at the age of 45. Some say the farmer's calling has become a profession.

Hon. Frank L. Coombs was educated at the common schools in California, and afterwards was graduated from Columbian Law School, Washington, D. C., in the year 1876. He was admitted to the bar of the California Supreme Court in 1876, and practiced law in Napa City and adjacent cities for some years. For three successive sessions he was a member of the assembly from Napa, and was Speaker at the last session, in 1891. He was again in the assembly of his native county and again chosen Speaker at the session of 1897. In 1892 he was appointed by President Harrison United States Minister to Japan, and held the position for four years.

Mr. Coombs was appointed to his present position as United States attorney by President McKinley, in 1897. On the 5th of September, 1900, at the Republican convention at San Jose, he was nominated for congress from the First district. In November following he was elected to that office by a very large majority.

Mr. Coombs is a man of agreeable presence and kind manner, a pleasing public speaker, and has canvassed his district and State for his party on several occasions. He has been a prominent member of the N. S. G. W. since that organization was founded, having gone through the several chairs of Napa Parlor, and become a past president of the Grand Parlor.

MICHAEL COONEY.

Michael Cooney was born in Ireland in 1839. His parents died when he was a child. He came to the United States when twelve years of age and located in Wyoming county, New York. He attended the public schools of New York state and worked on a farm in summer and went to school in winter, and supported and schooled himself. When eighteen years of age he owned a farm of eighty acres in Kalamazoo county, Michigan, and worked it himself. He returned to New York state and studied hard, and at twenty years of age went to Linn county, Missouri, where he had a sister. A vacancy occurring in the village school, after passing examination, he was elected teacher of the school, and served two terms. During this period he studied law and read the elementary law books. He then returned to the state of Michigan to settle up some business affairs, but before he could do so, it was too late to secure a school, and a friend of his who carried on the cooperage business, persuaded him to learn that trade, and he did so. In the meantime the Civil War broke out, and he did not return to Missouri to follow school teaching as he had intended. It was here he met his present wife, to whom he was married in the then village of Kalamazoo. Afterwards the California fever growing upon him he sold all he had except a lot of land which he had shortly before purchased in the village for a home, and in December, 1863, he started with his wife for California by way of New York, and steamer, and arrived in San Francisco in March, 1864. He has resided there ever since. He had to strike out like thousands of other self-made men for any

honorable work in sight, and he did so and found it in a cooperage establishment, where he earned good wages, taking an interest in public affairs at the same time and studying all his leisure hours. He was offered a place on the police force of that city, which he accepted. He filled this position faithfully, until 1869, when he resigned and was elected one of the justices of the peace of San Francisco. He served his term of two years in that office, and studied diligently all the time. He was renominated by acclamation for the second term, and, although running ahead of his ticket, was defeated. In the meantime he passed a creditable examination before the District Court, and the Supreme Court of the State, and was admitted to the bar and practiced continuously and successfully ever since. He has been a general practitioner, has had a large practice and the confidence of his clients and a multitude of friends. He has saved his money

and has considerable means; he has also raised a large family. He has refused nomination for public office a number of times, preferring to stick to his profession, in which he takes pride. He has participated in many patriotic and charitable movements, organized many societies and has served as president of many of them. He is a man of great executive ability and thoroughly in earnest in anything he undertakes. He has presided at more public meetings during the last twenty-five years than probably any other man in the State. He served several terms as chief officer of several fraternal insurance societies, and has paid out much money with entire satisfaction to all. He has never failed to assist in the advancement of the cause of liberty and humanity. Ireland, his native land, has had a share of his time in her struggle for nationality. When the present Boer war came along, true to principle, he took an active interest in that struggle, and gave the free use of his office to the Transvaal committee of California, which is composed of different nationalities—Germans, Hollanders, Irish, French and Americans, of which committee he has been president from the start.

While he has been extraordinarily active in all of these movements, he never fails to attend to his law business. His clients can always find him in his office at nine in the morning—in other words, his days are devoted to his profession, and his nights and leisure moments are freely given to charitable, fraternal and patriotic work.

One of the latest and most laudable services rendered by him to San Francisco was the establishment of a State Normal School there, which was secured solely through his efforts.

Judge Cooney may truly be said to be the father of that school, and the young men and young women of San Francisco and adjoining counties owe to him a debt of gratitude for the advantages thus secured.

T. E. K. CORMAC.

Captain T. E. K. Cormac has been at the bar in San Francisco since the year 1880. A few years after his location in that city he became the regular attorney for the British Consul there, whose department covers the Pacific Coast, and he has always retained that business through many changes in the incumbency of the office.

The Captain was born in the British Isles, was a cadet in the Naval Academy at Trieste, and served for some years in the Austro-Hungarian army as a lieutenant. He studied law in Boston, Massachusetts, was admitted to the bar in that city, and practiced there for a few years before coming to this State. For four years, 1883-87, he was one of the attorneys for the public administrator at San Francisco, Hon. Philip A. Roach. Since 1890 he has had for a law partner Denis Donohoe, Jr., son of the former British Consul at that city, of the same name. A few years ago Mr. Baum entered the firm, which has since been Cormac, Donohoe & Baum. It does a large business.

Captain Cormac's professional career has been one of continuous good fortune. He is a well-equipped lawyer. His pleadings are models of concise and accurate statement. In person he is tall, and finely built, of striking physiognomy, and soldierly bearing. He has a robust constitution and enjoys never-failing health. He always dresses well, and in taste. He has traveled a great deal, and takes a trip to Europe every few years. A man of broad culture, and quite engaging in conversation, he is a most agreeable companion, in addition to being a true friend. In art circles he is accepted as a critic of unerring judgment, and pure and correct taste.

Captain Cormac owns a fine law and miscellaneous library, a well-furnished and attractive home in Sausalito, and valuable redwood timber lands in Mendocino county. He is a bachelor, and fifty-five years of age.

W. A. COULTER.

Major W. A. Coulter, referee in bankruptcy for the United States District Court, northern district of California, at San Jose, following the example of Chief Justice Marshall, studied law while an officer in the United States army, and was admitted to practice while on staff duty with General Canby at Richmond, Va., on the 9th day of August, 1869. He was appointed master in chancery for the Circuit Court of Virginia, and for more than a year was the judge-advocate of the various military commissions organized under the reconstruction laws. He successfully conducted some of the most important trials before these tribunals during that period. In the latter part of 1870 he resigned his commission in the army and has ever since been engaged in the active practice of his profession.

Fifteen years of this period immediately preceding his removal to California was in the city of Washington, where he was counsel in important cases before the Supreme Court of the District of Columbia, the Supreme Court of the United States, the United States Court of Claims, the department of justice, and the several committees of congress.

During this period of professional activity at the national capital, his personal and professional relations with eminent men of the country, gained for him their confidence and appreciation, and he brought with him to his new field of labor in California letters from President Garfield, Secretary of the Treasury Windom, Justice Stanley Matthews of the Supreme Court of the United States, Senator Blair and Assistant Attorney-General Smith, commending in high terms his attainments and ability as a lawyer.

In consequence of the impaired health of his wife, Major Coulter came to California in 1892, and has ever since resided in San Jose. In September, 1898, he was appointed referee in bankruptcy for the United States District Court for the northern district of California. His decisions in some of the most important and difficult cases which have been adjudicated under the new bankruptcy law are commended by the brethren of his profession as able and clear expositions of the provisions of that act.

Major Coulter is a Pennsylvanian by birth, and an Ohioan by adoption and education. He entered the army from the latter State in October, 1861, when a mere boy. He served throughout the Civil War with honor and distinction. His services on the staff of such distinguished Generals as Major-General W. H. Emory and Major-General E. R. S. Canby elicited from these officers letters of the highest praise for his accomplishments and achievements as a staff officer. While on duty with the last-named General, he visited the island of Cuba, and by tact and strategy, secured for the United States government the first and only topographical map of that island ever possessed by our government. The letter of General Humphreys, chief of engineers, United States army, acknowledging their receipt, says: "These maps are of great value, and supply information that may be of the first importance."

The training of the soldier is always beneficial to the attorney and counsellor-at-law, for, while courage, fidelity to duty, aggressiveness, promptness, vigilance and honor are the characteristics of the true soldier, they are qualities equally essential in the successful lawyer.

T. J. CROWLEY.

T. J. Crowley has been a member of the San Francisco bar for the past thirty-three years, having been admitted to the Supreme Court of this State on July 6th, 1868, since which time he has been engaged in active practice, and been counsel in many important causes, both civil and criminal. Like most of the pro-

fession, his practice is of a general nature, involving every branch of the law. He was admitted to the Supreme Court of the United States in October, 1886. He is of Democratic politics, and has been the candidate of his party for Superior Judge of Marin county. His home is in San Rafael.

CHARLES W. CROSS.

Charles W. Cross was born in Syracuse, New York, May 28, 1848, a clergyman's son. He was educated at the Northwestern University at Evanston, Illinois, and was admitted to the bar of the Supreme Court of Illinois at Chicago in 1869. Removing to California he settled at Nevada City, and practiced law in partnership with J. B. Johnson. He represented Nevada and Sierra counties in the State senate at the twenty-fifth and twenty-sixth sessions, 1883-85, and was chairman of the judiciary committee for the whole period. He was a member of the last constitutional convention (1878), being among the delegates from Nevada elected on the Workingmen's ticket, which ticket carried that county by 2,048 votes out of a total of 2,378.

Mr. Cross removed to San Francisco in March, 1886. He has been associated with a number of well-known attorneys in that city, but is now alone in the practice. His busi-

ness is of large volume, and very valuable, mining matters predominating. He is as often seen in some court of the interior as in his home tribunals. There are few lawyers who enjoy such a liberal income as he has been receiving steadily from his practice for the past twenty years. He is a cultured man, of most agreeable presence and address.

Mr. Cross is a man of family, having grown sons, and owns, among other valuable possessions, a fine home at 19 Baker street, San Francisco.

WILLIAM JESSE CURTIS.

William Jesse Curtis is the oldest son of Hon. I. C. Curtis and Lucy M. Curtis. His father was a prominent member of the bar of Marion county, Iowa, for many years, and represented that county in the State legislature for several terms. His mother is the daughter of Jesse L. Holman, one of the early justices of the Supreme Court of the State of Indiana, and a sister of Hon. William S. Holman, who for more than thirty years was a member of congress from that State.

Mr. Curtis was born at Aurora, Indiana, on the 2nd day of August, 1838. In 1844 he moved with his parents to the then Territory of Iowa, and settled in Marion county near the present city of Pella. He was educated at the Central University of Iowa, studied law in his father's office, was admitted to the bar in 1863, and became a partner of his father. In 1861 he married Miss Francis S. Cowles, of Delaware, Ohio. In 1864 he crossed the plains with ox and mule teams, came to California and settled in the city of San Bernardino, where he has resided ever since.

The first five years after his arrival in California, he devoted to teaching school. In January, 1872, he opened a law office in the city of San Bernardino. In 1873 he was elected district attorney of San Bernardino county and was re-elected in 1875.

He has been associated at different times in the practice of his profession with Judge H. C. Rolfe, Hon. J. W. Satterwhite, Judge Geo. E. Otis and Judge F. F. Oster, and is now associated with his son, Jesse W. Curtis. The various firms with which he has been connected all occupied prominent positions at the bar of Southern California, and were retained in many important civil cases tried in San Bernardino county and frequently in cases tried in adjoining counties and in the United States Circuit and District Courts.

Mr. Curtis has always taken an interest in matters pertaining to the welfare of the city, county and State, and especially in the subject of education. He served for a number of years as president of the city board of education. He is president of the Bar Association of the county and one of the trustees of the law library.

G. A. DAUGHERTY.

Mr. Daugherty is a native of Ohio, and left for California within a month after graduation from college. He taught school for three years in Ohio and two years in California. He went to Salinas a total stranger, and what he has accomplished has been by hard work. We had the pleasure of making his acquaintance shortly after he located there. He had no relatives or wealthy friends to aid him, but has earned all that he has acquired by strict attention to business and honest dealing with every one.

Mr. Daugherty was admitted to the bar in 1888, and has been engaged in general practice ever since in Monterey and surrounding counties. He is in partnership with Mr. C. F. Lacey. This firm has some of the most important legal business in Monterey county, and only one other firm in that county exceeds it in amount of practice.

Mr. Daugherty is now president of the city board of education of Salinas, and chairman of the Republican county central committee. He is also United States commissioner for the United States District Court of the Northern district of California.

CHARLES CASSAT DAVIS.

Mr. Davis was born at Cincinnati, Ohio, in 1851. He was graduated from Columbia College Law School in 1875, and followed the profession in his native city for ten years. In 1880-81 he was a member of the Ohio legislature. He drafted the law of that state which New York and other states came to adopt, in regard to assessment life insurance companies.

Mr. Davis removed from Cincinnati to Los Angeles, Cal., in 1885, and there he has since lived and pursued the law. His practice has principally embraced office and corporation business. From 1896 to 1900 inclusive, he was a member of the board of education, and for the last half of the period was president of the board. Early in his service in that body, in concert with Hon. N. P. Conrey, another member, now Superior Judge, he set on foot and led an investigation into school department methods, which resulted greatly to the promotion of clean local politics. In 1900 he was a candidate for the Republican nomination for mayor of Los Angeles, and without any active canvass, came within a few votes of receiving the nomination. The nominee was defeated at the polls.

Mr. Davis is an unmarried man. He stands very high in the estimation of his fellow-citizens, and has many years of usefulness before him as a public man.

HENRY H. DAVIS.

Henry H. Davis was born in Exin, Germany, September 27, 1860, and comes of that stalwart stock which has given force and direction to the civilization of the later centuries. Arriving in New York while his son was yet a child, after a brief stay there, the father settled in San Francisco, California, leaving his family to follow him in due time, if he found matters to his liking in that far-off State.

After a year's residence here, he concluded

to remain, and he proceeded to make a home, to which his family came in 1868. Henry was immediately sent to the public schools, and by dint of diligent application passed with distinction through all the various classes of the primary and grammar grades. Having prepared for a collegiate course of study, he was sent to the State University, and took the classical course in that institution, and was graduated with honors in 1876.

Although scarcely out of his teens, by unremitting study and tireless industry, he had possessed himself of a liberal education. He improved a year of relaxation by a trip to Europe, visiting his native land, Germany; Russia, England and various countries and places of note in the Old World. Returning to California enriched by observation and the experiences of extensive travel, he entered on a course of law study at the Hastings College of the Law of the State University. As his natural inclination lay in the direction of his studies, his progress was both rapid and thorough, so that on graduating in 1882 he was immediately admitted to practice in the State and Federal courts. Without wealth or family or political influence, he had to rely on his unaided individual exertions to obtain success and standing in his profession. Nevertheless, the energy and native capacity which have always carried him through successfully thus far, still stood him in good stead, and he has gradually worked up to a lucrative practice, his operation being mostly in the Superior and Supreme and Federal Courts, and his clients are of the solid and respectable character, which insures safe and substantial remuneration. He occupies several offices in the building No. 420 California street, San Francisco, and has one of the largest law libraries in the State. He owns an attractive and elegant residence on California street, besides a lot of other valuable real estate in different parts of the city and State, all the result of his own efforts.

Mr. Davis is an active member of numerous fraternal and benevolent associations, and as he unites great natural intelligence, genial manners and great affability, his counsel and assistance are in great request in these organizations. He is a member of King Solomon's Lodge, No. 260, F. and A. M.; Past Chancellor Commander of Laurel Lodge No. 4, K. of P.; S. F. Chapter Royal Arch Masons, and California Council, Royal and Select Master Masons. He has been three times elected Exalted Ruler of Golden Gate Lodge, No. 6, of the B. and P. Order of Elks; Past Chief Ranger of Court Robin Hood, No. 1, Foresters of America; a member of Cremieux Lodge, No. 325, I. O. O. B.; a member of Division No. 2, Uniform Rank K. of P.; Past Master Workman, A. O. U. W., and a member of the Independent Order of Old Friends. He has been identified with much of the litigation that has arisen in fraternal orders in many years past. Of political organizations he is a member of the famous Bear Club, and though always a warm partisan and staunch supporter of his party and its principles, he has never, in the sense of being an office-seeker, been a politician. Mr. Davis has many warm friends who rejoice in his success, and who wish him abundant prosperity and happiness in the future.

WILLIAM R. DAVIS.

William R. Davis, of Oakland, has lived in California forty-six years of the fifty of his life. He was educated in the public schools and the University of California, afterwards taking up the profession of the law, which he still pursues. Following are some of the steps in his work and career.

In 1874 he was graduated from the University of California, receiving the degree A. B. In 1875 he was principal teacher in Washington College. In 1876 he began the study of law. In 1877 he received the degree of A. M., from the University of California. He was admitted to the bar by the Supreme Court of California in 1878, and in 1880, to the United

States District and United States Circuit Courts, and in 1886, to the bar of the Supreme Court of the United States.

In 1880-1, and again in the years 1896-7-8, Mr. Davis was president of the Alumni Association, University of California.

He was mayor of the city of Oakland for the years 1887-88, being elected by the Republican party. In 1890, he was chairman of the Alameda county delegation in the Republican State convention, and chairman of the third district congressional convention.

He was president of the national Republican League of Alameda county, and chairman of the third district congressional convention in 1896.

Mr. Davis was born in Iowa, February 26, 1850, but is a Californian through and through, having lived in this State, as shown above, since he was four years of age. During the past twenty-two years he has followed his profession with great diligence, and has had a full measure of success, standing today one of the acknowledged leaders of the bar of the State. For many years his voice has been heard in State and national campaigns, always in support of the Republican party, in whose principles and course in government he is a firm believer. His services in the last presidential campaign were everywhere recognized by his party as of the highest value.

During his long professional life Mr. Davis has accomplished a vast amount of work. Called at times to Oregon and Nevada in addition to his engagements in the courts of California, he has nevertheless been able to do his full share of work for our university as one of its distinguished graduates, as president of the Alumni Association and in its financial support; and to strengthen the cause of the political party to which he gives allegiance. He has made in many parts of the State addresses upon educational questions and matters of public concern, including addresses to teachers' institutes, to fraternal organizations, at the university, to literary and professional societies, political discussions, memorial addresses and orations.

The influence of Mr. Davis in public life has been for harmony and construction as against contention and tearing down. It has been repeatedly said of his course as mayor of Oakland that the city never had a better administration. During his term the freeholder charter was framed and adopted. At the request of the freeholders he made suggestions, nineteen in number, all of which were adopted and which have since proved of high value. Mr. Davis declined renomination. The press of his home city, at the close of his official term, irrespective of party, expressed approval of his way of directing public affairs, one journal saying: "He could have had a second nomination as he received the first, by acclamation." Another: "He has filled the position with intelligence, dignity and application, has acted with a mind single to the best interests of Oakland." Another, a Democratic journal: "He has made a good mayor and deserves reendorsement. Our Democracy is not so thick that we cannot speak the truth of him." Another: "His last message, like all his former communications, is characterized by singular good sense, and a thorough understanding of municipal affairs. He may be congratulated on completing his term without a recognizable mistake, without an act called in question."

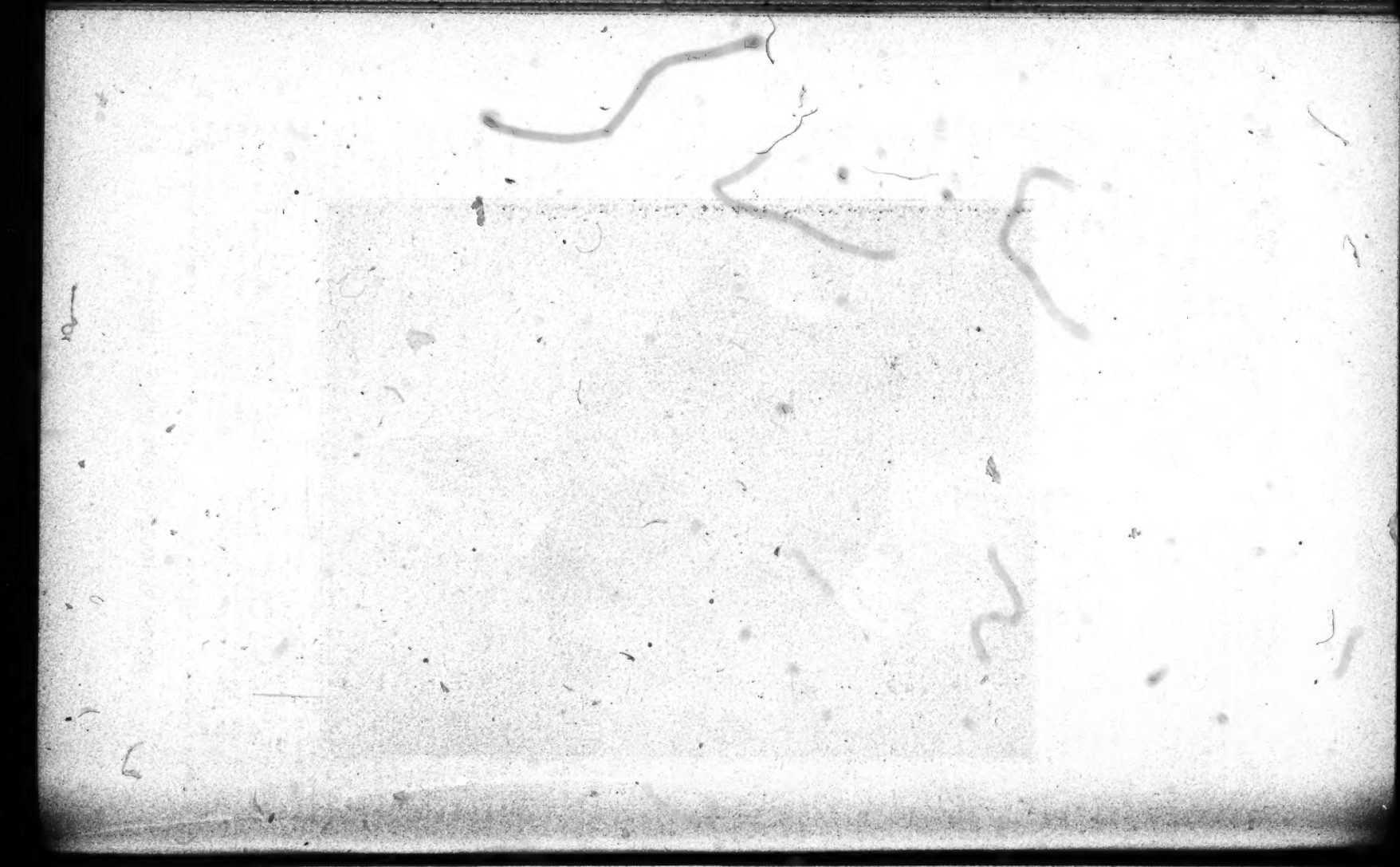
Of the many important matters which have been placed in his professional hands, Mr. Davis considers perhaps the most important, as it has been the most difficult, the litigation comprising the Oakland water front cases, in which he was employed by the city, and which involved research through a history of over forty years—ordinances, legislation, contracts, previous judgments against the city, deeds, ratifications, compromises, tax sales—in all, thirteen independent derivations or chains of title asserted against the city, and also involving principles of State and national concern, and well nigh innumerable complex questions of law. Although he was not of the political party then in office, he was unanimously asked by the city attorney, city council and mayor to act as counsel for the city in this water-front litigation. The briefs and arguments of Mr. Davis and his associates in these cases are viewed as exhausting the subject of a municipality's rights (as grantee of a State) as to shore-lands and navigable waters.

We have tried to be careful in condensing the story of a remarkably active life. Mr. Davis is in now in his prime, and is still in full practice of law at his home in Oakland. He married in 1879, and his family consists of his wife and two sons.

GEORGE E. De GOLIA.

Mr. DeGolia was born at Placerville (Hangtown), El Dorado county, California, May 3, 1857. He lived the ordinary life of a country boy, and at the age of fourten was appointed a page in the assembly. From his earnings he saved sufficient to enable him to attend the State University. He entered the university at the age of sixteen, and was graduated in 1877, being fifth in a class of twenty-six, and being first in the college of civil engineering, which course he took there, and also taking a literary course.

In 1878 Mr. DeGolia became managing editor of the Oakland *Daily Transcript*. He was in the newspaper business about a year. When the Hon. Henry Vrooman was elected district attorney in March, 1878, Mr. DeGolia entered his office as clerk and student. He was admitted to practice by the Supreme Court, upon examination, in 1879. At the legislative session of 1880 he was secretary of the senate judiciary committee. He practiced law from 1879 until 1883, and was appointed assistant district attorney of Alameda county, which position he held for six years. In 1889 Mr. DeGolia formed a law partnership with Mr. Vrooman, and upon the latter's death in that year, succeeded to much of his practice, and to Mr. Vrooman's fine library. He has been engaged in active practice since, and has been



W. E. F. Deal

and is still interested in many large cases in Alameda county.

Mr. DeGolia began to take an interest in politics in 1878. He soon became actively engaged on the Republican side in Alameda county, and continued so until 1894. After Mr. Vrooman's death, and until 1894, he was looked upon as the Republican leader in Alameda county. He took a prominent part in State matters, going to the national convention of 1888, at Chicago. He has been secretary of the Oakland Bar Association since its organization, and is a charter member of the Athenian Club. He is also a prominent member of Oakland Commandery, Knights Templar, as well as the Scottish Rite branch of Masonry, also of the Mystic Shrine. In 1891 he organized a lodge of Elks in Oakland, of which organization he was Exalted Ruler for several years, and represented the order in the Grand Lodge in the East at several annual sessions. He is a leading member of Piedmont Parlor, Native Sons of the Golden West, and has been a delegate to the Grand Lodge of that order since 1892.

Mr. DeGolia was married in 1883 to Caroline Barroilhet Rabe, daughter of Dr. Rabe, who was a distinguished man in early California history. He has two children, a girl, sixteen, and a boy, fourteen. He is very prominent in Oakland society, being one of the leading members of the Oakland Golf Club. Mr. DeGolia has been notable in college athletics, football, baseball, swimming, rowing, and has kept it up a good deal to the present time. He is considered the best amateur with the foils in Oakland.

Mr. DeGolia has established quite a reputation in Oakland as a corporation attorney and in probate practice, having been attorney for the public aduministrator a number of years, and an authority upon points in probate practice. He has been unusually successful in winning lawsuits.

He endeavors to settle lawsuits out of court, rather than in court contests, and has obtained the confidence and esteem of the entire community, both as a man and as a lawyer. He considers it a compliment to have it said of him that no lawyer ever asks him for a *written* stipulation.

W. E. F. DEAL.

Mr. Deal is a citizen of the State of Nevada, where he has a large law business, but he has also been practicing at the San Francisco bar since the year 1893, in partnership with Edmund Tauszky and George R. Wells (Deal, Tauszky & Wells). He is an early-day Californian.

Mr. Deal was born in Maryland, March 8, 1840. He prepared for college at R. G. Chaney's Academy, at Owensville, Md., and Newton University, Baltimore City, and entered Dickinson college, Pennsylvania, in September, 1855. He was graduated from that institution in 1859, with the degree of Bachelor of Arts, and received the degree of Master of Arts from the same college in 1874.

Mr. Deal left for California by steamer from New York city in August, 1859, arriving at San Francisco, September 12th. His father, Dr. W. Grove Deal, left Baltimore for California a decade prior, and reached San Francisco by way of Panama, in the spring of 1849. He was a Doctor of Medicine as well as a local Methodist preacher. Settling in Sacramento in 1849, Dr. Deal practiced medicine, and on Sundays preached the gospel. The Doctor purchased the historic spot, "Sutter's Fort," when cholera broke out, and made of it a cholera hospital, conducting it at his own expense.

The elder Deal was also a public speaker of the first class. He was a member of the assembly at the first session of the legislature. He was an old Whig, and when that party passed out he joined the Know-Nothing, or Native American party. In the presidential election of 1856 he took the stump for Fillmore. We heard him then with the most pleasurable feelings. Baker was the only man who had greater power over a public assemblage. Thomas Fitch had not arrived. Dr. Deal soon afterwards became a Democrat, and remained so in all his after life. In the Civil War he served to the end as a surgeon, and was then honorably discharged.

Mr. Deal, the bar leader of Nevada, who is now at the bars of two States, taught school at Oakland, Colusa, and Nevada City. At the latter place, where Superior Judge James V. Coffey was one of his pupils, he was principal of the school until he left for Virginia City, Nevada territory. This was on the 26th of May, 1863. In Virginia City he entered as a clerk the law office of Perley & De Long. He was admitted to the bar of the Nevada Supreme Court in 1865, but continued in his place as law clerk until Mr. Perley removed to White Pine in 1866, the firm then dissolving. Mr. De Long a few years later became United States minister to Japan.

Mr. Deal then served as office attorney for Hillyer (C. J.) & Whitman (B. C.), until 1868, when the last named was elected Judge of the Supreme Court. A partnership was then formed between Mr. Hillyer and Mr. Deal, which continued from November, 1868, to January, 1869, when William S. Wood entered the firm, which lasted, under the style of Hillyer, Wood & Deal, for two years.

In 1871-72, Mr. Deal practiced alone. In 1873 he formed a partnership with Hon. James F. Lewis, who had been Chief Justice of the Supreme Court. This association continued until 1884, when Judge Lewis removed to Arizona.

In June, 1894, the present San Francisco law firm of Deal, Tauszky & Wells was established.

Mr. Deal always acted with the Democratic party until the Silver party was formed in Nevada in 1893. He has never held an office of profit. He has never run for an office of profit to which he cared to be elected, except that of District Judge of Storey county, Nevada, in 1868. He ran for Congress on the Democratic ticket in 1878, and was defeated

by R. M. Daggett, Republican. He was elected a presidential elector, when Nevada voted for General Hancock for President, in 1880. He was appointed one of the commissioners for the care of the insane by act of the legislature in 1881. Under this act and this commission the asylum for the insane of Nevada was built at Reno. Until that time, the Nevada insane patients had been cared for in the asylums of California. He served as such commissioner for four years. For the first six months of this period he gave himself to a struggle to keep the management of the asylum out of politics, but it was unavailing.

Mr. Deal was elected by the people of Nevada, at the general election in 1894, a regent of the State university. In 1898 he was re-elected, and his present term will expire at the close of 1902. He has refused to run for any office of profit since 1878. He was a hard working lawyer's clerk for five years, and has practiced in the State and Federal courts of Nevada and California for thirty-three years. He is attorney for the Comstock Pumping Association, composed of all corporations owning claims on the Comstock lode. This association was formed to drain water from below the Sutro tunnel level. He is attorney for all the corporations owning claims on that lode, and is the attorney and a director of the Virginia & Truckee Railroad. Having large business and law offices on both sides of the Sierra, he has occasion to cross the mountains every few weeks, and is the greatest traveler of the bar of either State, or perhaps any State.

Mr. Deal is of large stature physically, as the foregoing reference to his practice demonstrates him to be mentally. He is of fine personal appearance, cordial manners, and commands the esteem of all classes. In 1876 he was admitted to the bar of the United States Supreme Court at Washington. He was married to Miss Roberta Griffith, at Baltimore, Md., on May 4, 1875. His children, three daughters and a son, were all born at Virginia City, Nevada.

It may be added that long before the present firm of Deal, Tauszky & Wells was established, Mr. Deal had a short business at San Francisco with John W. North and James F. Lewis, under the style of North, Lewis & Deal. This was in 1880-81. All three gentlemen were of the first distinction as lawyers and citizens. The first named had been a Justice of the Supreme Court of Nevada territory. He founded Riverside, and a sketch of him is in this History. Judge Lewis, who has been already referred to, possessed great legal attainments and natural ability. He died suddenly, at Fort Yuma, in August, 1886, at the age of fifty years. He was a native of Wales. His burial was in San Francisco, from the First Unitarian church, the Rev. Dr. Lathrop, of the Episcopal church, assisting at the ceremonies.

E. N. DEUPREY.

Here is a stanch and sturdy mind, as prime as ever, after being in play at the bar of San Francisco for thirty years. Eugene N. Deuprey was born in Louisiana, in 1850, but he has lived in San Francisco since earliest boyhood and all his professional career has been passed there. He was educated in the public schools of that city. He prepared for the bar while acting as clerk in the office of the great law firm of Shafter, Park & Shafter. His powers of mind and inborn aptitude for the profession he was seeking attracted the notice of able men. James McM. Shafter, especially, has expressed very high admiration for his talents.

Mr. Deuprey was admitted to the bar of the State Supreme Court in 1871. He very soon got into good practice, and he has been a notable figure at that bar throughout the long period since passed. The trite phrase as to being in "active practice" may well be employed in allusion to him. He never seems to rest. "Quiet to quick bosoms is a hell," and the law of Mr. Deuprey's being urges him on without apparent respite. The latest great occasion when his unrelaxing indefatigability drew to him the eyes of the American bar was in the protracted trial of W. H. T. Durrant for murder. He displays equal ability in all departments of the practice, but the great bulk of his business has been at the criminal bar.

Mr. Deuprey is of Democratic politics. He has stumped for his party, and in 1898 was president of the Democratic nominating convention of his city. As a speaker he is rapid and forceful. He always commands attention and rewards the listener, whether in court, in political conventions or before the masses. At present he is, and has been, since the opening of the year 1900, assistant district attorney of San Francisco, under Hon. L. F. Byington.

W. L. DUFF.

Mr. Duff was born on the 25th day of August, 1843, in Lafayette county, Mississippi. He served in the Confederate Army from the beginning to the end of the war, holding the rank at different periods of captain, major, lieutenant-colonel and colonel of his regiment, the Eighth Mississippi Cavalry. For the last two years of the war he was a member of the Mississippi legislature (1865-66), during which time he was aide-de-camp on the Governor's staff, and also major-general of militia.

General Duff was admitted to the practice of law in all of the courts of law and equity in the state of Mississippi in the early part of 1866. He moved to Memphis, Tennessee, in 1867, and was admitted to the practice of law in the state courts, and also in the Federal, District and Circuit Courts, in 1867, and also in the United States Supreme Court in 1878. He moved to Eureka, California, in 1881, and was admitted to practice in California by the Supreme Court in 1883. He has since always lived in Eureka, and is in full and lucrative practice.

Henry C. Dibble

HENRY C. DIBBLE.

Judge Dibble, who has been conspicuous through a long period not only at the bar and in politics, but in the field of journalism and literature, has been at the bar of this State since 1883. He located in San Francisco in February of that year. In 1885-86 he was assistant United States attorney under Hon. S. G. Hilborn, and he has been a member of the assembly at every legislative session since that time. He prefers the lower house, as being nearer the people, and never lets his name be used in connection with the State senate. He is always the leader of the Republican side. During this period also he has been at times editorial writer for the principal newspapers of his party.

Judge Dibble was born in Indiana on the 8th of November, 1844. He enlisted in the Union army in the Civil War, at the age of eighteen. He lost a leg at the battle of Port Hudson. Settling in Louisiana at the close of the war, he prepared himself for the bar, and was admitted to practice by the Louisiana Supreme Court in 1865. He was not yet twenty-one years of age. Two years later he graduated from the law department of the University of Louisiana. Entering politics, he at once took a leading positon—indeed, it is said that he was at the head of the Republican organization at the age of twenty-three years. He maintained this prominence for some ten years, and in that period was Judge of the Eighth District Court, and assistant attorney-general of the state. He was also president of the school board of New Orleans for six years.

Before Judge Dibble removed from Louisiana to California, he spent some two years in Arizona, practicing law at Tombstone, and at the same time superintending the mines of Haggin & Hearst. He located in San Francisco in 1883, and was for three years in law practice with Hon. James F. Lewis, ex-Chief Justice of the Supreme Court of Nevada. Afterwards he was in partnership with Louis T. Haggin, son of James B. Haggin.

Judge Dibble has raised and educated a family of four sons and two daughters. Two of his sons are in law partnership with him at San Francisco.

The Judge is the author, among other productions, of a strong, romantic novel of western life, entitled "The Sequel to a Tragedy," published by the Lippincotts, in October, 1900. As a public speaker, Judge Dibble is in the first rank.

JOHN H. DICKINSON.

General John H. Dickinson, so long conspicuous not only at the bar, but in Republican politics and military circles, is a native of the state of Virginia. He was born, April 8, 1849. He has always followed the profession of law in San Francisco. His admission to practice by the Supreme Court occurred in April, 1873. While keeping his office in the metropolis, he established his residence across the bay, at Sausalito, Marin county, in 1893. He is a man of family.

General Dickinson represented a San Francisco district in the State senate at the sessions of 1880, 1881, and the extra session of the latter year, and was State senator for Marin and Contra Costa counties at the sessions of 1897, 1899, and the extra session of 1900. He is a man of soldierly bearing, and has always been connected prominently with the militia, having been colonel of the First Regiment, N. G. C., for eight years, ending in 1891, and brigadier-general, by appointment of Governor Markham, 1891-1894. His law practice is general and very valuable. He was attorney for the executor in the Jessup case, mentioned in the sketch of Judge Charles N. Fox. In the Durrant murder case, the persistent efforts of himself and Hon. Eugene N. Deuprey to save the condemned man are fresh in memory. He has the business of the house of H. S. Crocker & Co., and other large firms and corporations.

W. A. DOW.

Mr. Dow was born in Sutter County, California, January 3rd, 1866. In 1880 he was sent to Oakland to attend school. He graduated from the Oakland Grammar School in 1880, and from the Oakland High School in 1884. He entered the University of California in 1885, and graduated therefrom in 1889. He was admitted to the bar by examination before the Supreme Court in 1890, and immediately thereafter commenced the practice of law in San Francisco. In 1889 Mr. Dow married Miss Lizzie Harrell, a resident of Oakland, and built a home in East Oakland, where he has ever since resided with his family, now consisting of wife and three children. In 1893 he was elected to the Oakland City Council, and continued as such officer, including one re-election, until 1897. From April, 1894, until April, 1895, he was President of the Council. In 1897 he was elected City Attorney of Oakland and Ex-Officio Commissioner of Public Works. In 1899 he was re-elected to that office, which position he is now occupying. The records of the State Supreme Court, and of the United States Courts show that during his incumbency of the office of City Attorney of Oakland he has successfully conducted, unassisted, numerous suits in behalf of the city, involving large interests.

JOHN A. DONNELL.

Major John A. Donnell, of the Los Angeles bar, has had a conspicuous military and civil career. He was born in Decatur county, Indiana, in 1838, removed with his parents to Iowa in 1854, and was graduated with first honors from Washington College in 1861. The Civil War opened just then, and he enlisted and served throughout that conflict, being promoted to adjutant for one of his acts of gallantry on the field. After the war he studied law in the office of Hon. G. D. Wood in Sigourney, Iowa. He was admitted to the bar in 1867. He enjoyed great popularity and was

elected at different times to the offices of county clerk, county attorney, president of the board of education, member of the city council of Sigourney, district attorney of the Sixth Judicial district, and in 1886 ran for congress in the Sixth Congressional district of Iowa.

Major Donnell came to California in December, 1887. Locating at Los Angeles, he was engaged in law practice, when, in 1889, he was appointed assistant district attorney. He was elected district attorney in the fall of 1894, and served a term of two years.

The Major married, at Sigourney, Iowa, in February, 1868, Miss Sue C. Hogin, daughter of Hon. J. C. Hogin, of that place. Mrs. Donnell died in October, 1887, immediately before the Major removed to California. His family consists of five sons and three daughters. The eldest daughter is married to W. E. B. Partridge, of the Partridge & Alford Iron Works of Los Angeles. All the older children are in business.

Major Donnell's parents were born in Kentucky. His grandfather was a soldier in the Revolution, taking part in many battles.

HENRY C. DILLON.

This gentleman, who has had so successful a career at the Los Angeles bar, was in the full tide of prosperity in the city of Denver, Colorado, when he was compelled, on account of the condition of his health, to seek a home in California. He was born in Lancaster, Grant county, Wisconsin, November 6, 1846.

Mr. Dillon's father, Patrick Dillon, was a California pioneer. Although he followed a life of manual labor, he had the natural qualities of a great lawyer, and was an educated, as

also a most interesting, man. He was a graduate of Maynooth College in Ireland, a scholar in Hebrew, Greek and Latin. He was a good linguist, in both ancient and modern tongues. He spoke French, Spanish and Italian fluently. Among the miners of Nevada county, in this State, to whose number he belonged, he acted as arbitrator in many famous controversies. He always refused compensation and disdained office. He will long be remembered by the miners of Nevada county. He was one of the few men named Patrick who are not called "Pat." We even say "Pat" Reddy. If the reader is ever called to the mining regions of Nevada county he will hear Patrick Dillon spoken of in terms of affection and eulogy. Patrick Dillon attained the age of sixty-five years.

Henry C. Dillon was graduated from Racine College, at Racine, Wisconsin, in the class of 1872, as "Head of the College." He studied law at Racine for two years, and was admitted to the bar by the Supreme Court of Wisconsin, after examination, in July, 1874. Removing immediately to Denver, he began practice there in the same year. He was a prominent figure at that bar for fourteen years. He had for partners at different times Hon. John T. Charles, Lewis C. Rockwell, and Judge Vincent D. Markham. These were all famous men. Mr. Rockwell was at the head of the bar.

Mr. Dillon found that he could not endure the high altitude of Denver, but must look for health at the sea level. He gave up a most profitable and congenial practice in August, 1888, and removed to Los Angeles, California. He was not long in acquiring a large business. His professional ability and personal worth were soon recognized. He has always practiced alone since locating there. He was elected district attorney of the county, and served the term of two years, 1893-94. He was chosen as a Democrat, and has usually acted with that party, but in 1900 he supported President McKinley, believing in the policy of expansion.

Mr. Dillon's practice is a general one, but has principally to do with mining, corporations and estates. He is general counsel of the California Eastern Railway Company, whose road is one of the links in the new Salt Lake line, and which has been in operation since 1894.

Mr. Dillon married, at Denver, in 1876, Miss Florence Hood. The lady is the sister of William Hood, the chief engineer of the Southern Pacific Company. There are six bright children of this union, five girls and a son. All the family are musical, except our friend himself. Miss Florence, the older daughter, is a vocalist of distinction, and is finishing her musical studies in Italy. Another daughter is showing genius in the line of musical composition.

This useful citizen and provident family head has won his good fortune by faithful, intelligent effort, and merits it all. He is well known as the owner of a large fruit ranch near Long Beach, a beautiful place, principally in lemons, on which he has spent many thousands of dollars. It is just beginning to "pay." He has built there an elegant and roomy residence, which will probably be the happy home of his descendants for generations.

Mr. Dillon is largely interested in the oil industry, and is connected with various oil and mining companies, both as an owner and as attorney.

R. F. DEL VALLE.

Mr. Del Valle's familiar name is to be linked with those of Stephen M. White and William J. Hunsaker, as that of an honored "native son," prominent at the bar of Los Angeles. He, alone of the three, is a native of that city. He was born December 15, 1854. His father, Ygnacio Del Valle, of an old distinguished Spanish family, a man of high character, who owned the "Cumulos Rancho" in Ventura county, died there in 1880, at the age of seventy-two. Ygnacio Del Valle was a member of the assembly at the third session, in 1852. This country seat of the family is the scene of Helen Hunt Jackson's "Ramona."

Mr. Del Valle received his early education in the schools of Los Angeles city, and afterwards took a full course in Santa Clara College, at Santa Clara, where D. M. Delmas and some other of our noted subjects were brilliant scholars. He was graduated from that institution in 1873. He studied law in San Francisco, in the office of Winans & Belknap, both of whom are fully noticed in this History, and was admitted to the bar of the State Supreme Court in 1877. He then began practice in his native city, at the same time taking an active part in politics on the Democratic side.

In the fall of 1879, Mr. Del Valle was elected to the assembly from Los Angeles county, and served in the legislative session of 1880, the first under the present constitution. That instrument provided that the sessions of the legislature should be held every two years except that the second session should convene in one year after the first. Mr. Del Valle served in the assembly at the second session under the new constitution, held in January-March, 1881, and at the extra session of April-May, 1881. At the next session he appeared in the senate, and was chosen president *pro tem.* of that body at that session, 1883, and at the extra session of March-May, 1884. His term as senator covered the regular session of 1885 and the extra session of 1886. In the assembly on April 15, 1880, he introduced a concurrent resolution for the appointment by the Governor of a commission to consider the question of dividing the State, to report at the next session. This resolution was referred to the Los Angeles delegation, which seemed to have taken no action;—it hardly could, as the legislature adjourned *sine die* the next day.

On August 28, 1884, Mr. Del Valle was orator of the day at Monterey at the centennial of Father Serra's death, the old Mission church at Carmel having just been "restored." In that year he was the Democratic candidate for congress from the then Sixth District, and made a very creditable run against great odds, being defeated by H. H. Markham. At the Democratic State convention which met at Los Angeles on May 15, 1888, Mr. Del Valle out of compliment both to himself and his city, was unanimously elected temporary chairman, and on the next day was unanimously elected permanent president. He was also chairman of the Democratic State convention in 1894, which nominated the successful candidate for Governor, Hon. J. H. Budd, and in 1900, was a delegate to the Democratic national convention which met at Kansas City.

When the State went for General Hancock for President in 1880, he was a Presidential elector, and received the largest number of votes cast for any candidate.

Mr. Del Valle is now one of the oldest practitioners, although only forty-six years of age, at the Los Angeles bar. An observant writer said of Mr. Del Valle in 1889 (which still applies) that "he has a natural modesty that is as striking as it is attractive. Among our many distinguished fellow-citizens, there is no one whose character and ability have endeared him to a wider circle of friends, no one who is more warmly esteemed or more cordially respected by those who know him."

M. C. DUFFICY.

M. C. Dufficy was admitted to practice in the Supreme Court of the State of California on the 9th of January, 1894. There was

a class of forty-five applicants, and Mr. Dufficy was the second on the list, and was examined before the full bench, Judges Van R. Paterson and Ralph C. Harrison managing the examination; at this sitting of the court eleven applicants were rejected. Before preparing himself for admission to practice he occupied the position of justice of the peace for San Rafael township, Marin county, having first been appointed to fill a vacancy made by the resignation of George W. Davis; and then he was elected to succeed himself in 1890.

Judge Dufficy was born near the town of Strokestown, county of Roscommon, Ireland, December 29, 1839. His parents brought him to the city of New Orleans, La., when he was six years of age, where his father died in 1848. He attended school in New Orleans for six years, or until 1852, when his mother and family came to California via Panama, arriving in San Francisco in December, 1852. Mr. Dufficy, who was the fourth of a family of seven children, remained in San Francisco

until 1854, when he located in Marysville, Cal., and remained there until 1876. He was a merchant, hotel-owner and proprietor, and a large dealer and owner in real estate, etc.

For a period of eight years he conducted the Western hotel, and the St. Nicholas hotel of that place. He was also proprietor of the Brooklyn hotel, in San Francisco, during the years 1891 and 1892. In 1883 he moved to San Rafael, and conducted the Central hotel until 1886, when he returned to his farm in Yuba county, where he engaged in farming until 1888. Returning to San Rafael to make his home, he purchased residence property, and was engaged in his official duties as above indicated. For the last six years he has practiced his profession as an attorney and counsellor-at-law.

During the years between 1857 and 1863, while residing at Marysville, Judge Duffícy, then a young man, made the study of law a specialty in the office of Judges L. J. Ashford and Francis L. Hatch.

During this time he became acquainted with the late Judge Isaac Sawyer Belcher and his brother, the late William Caldwell Belcher, who were at that time the prominent men of the profession in Marysville, and Mr. Duffícy having numerous real estate interests which involved more or less litigation, W. C. Belcher was his confidential attorney. He declares in positive language that the experience and knowledge acquired by being thrown in contact with the honored dead just named was of very great value to him in after life.

Judge Duffícy was joined in marriage February 3, 1863, with Edwina M. O'Brien, a native of Dubuque, Iowa, and daughter of Dr. James O'Brien, formerly county physician of Oroville, Butte county.

Mr. and Mrs. Duffícy have nine children, three sons and six daughters. The Judge is a staunch Democrat in politics, still active in political matters, and may always be found allied with the better and more progressive element of his own party. He is a gentleman of culture, and his circle of friends is very large.

CHAUNCEY H. DUNN.

Chauncey Homer Dunn was born in Laurel, Ohio, on September 25th, 1856. He came to California with his parents in 1860, and has since resided here continuously. His father, Rev. Thomas S. Dunn, was for thirty-five years a leading Methodist minister, having filled nearly all the large charges of his church in California at some time during his ministry.

Chauncey H. Dunn was educated in the public schools of California and at the University of the Pacific, near San Jose, graduating from that institution in June, 1878, and receiving the degree of bachelor of arts. He was admitted to practice before the Supreme Court of this State in November, 1882, and has been located at Sacramento city since that time. For eighteen months he worked as one of the associate editors on the American Decisions, when his practice had increased so that he was unable for want of time, to continue that work longer. He was associated with Hon. J. N. Young, under the firm name of Young & Dunn, for five years; and has been associated with Judge S. Solon Holl under the firm name of Holl & Dunn, since April, 1891.

Mr. Dunn was originally a Republican in politics, but in 1884 he joined the Prohibition party, and was many times its candidate for various offices, among them attorney general, lieutenant governor, and congressman. In 1896, he attended as a delegate the Prohibition national convention and was among those who left the convention and the Prohibition party, because of its attitude in declaring for the single issue of prohibition and refusing to declare its position upon the other leading issues of the day. He believed that no party could ever be successful that was unwilling to take sides upon the important political issues pressing for settlement.

In 1898 Mr. Dunn was one of the nominees of the citizens' independent movement for Judge of the Superior Court of Sacramento county. In May, 1900, he was a member of the general conference of the M. E. church that met at Chicago, and which meets but once in four years, and which is the supreme legislative body for that denomination.

He has been president of the Young Men's Christian Association of Sacramento for many years. By his studious habits, his known integrity, and his close attention to his professional duties, he has built up a large and lucrative practice, and enjoys the undivided esteem and confidence of the business community.

W. H. C. ECKER.

Mr. Ecker was born near Allegheny City, Pennsylvania, on May 6th, 1849. When he was about four years of age he, with his parents, settled on a farm, near the city of Gallipolis, in Gallia county, State of Ohio. He received an academic education at the Gallia academy, graduating from that institution in the year 1873. He taught school for a time in Ohio, and West Virginia, and then attended the Cincinnati Law College, graduating therefrom in the year 1874. Returning to Gallipolis he engaged in the law practice until 1880, when he was elected to the office of prosecuting attorney for Gallia county, and was re-elected, serving for six years in that capacity.

On account of ill health he moved to California, residing at San Jose for a while, and in 1888 he located permanently in San Diego county. He was admitted to practice in the Supreme Court of the United States at the city of Washington in 1882. His practice now is in both State and federal courts. In 1899 he was elected to the city council of the city of San Diego, which office he now holds.

Mr. Ecker is a member of the Masonic order, and belongs to Rose Croix Commandery No. 43, of Gallipolis, Ohio.

CHARLES P. EELLS.

Mr. Eells was born in New York, May 18, 1854. His father was a learned and emi-

nent divine of the Presbyterian Church, the Rev. James Eells, D. D., so well known in California a generation ago. The latter left this State some years before his death, which occurred at Cincinnati, Ohio, March 9, 1886. He was then a professor in Lane Theological Seminary, and in his sixty-fourth year. He left a comfortable estate to his two children, Charles P. Eells and Mrs. Horatio Livermore. A sketch of his useful life is to be found in Bancroft's "Contemporary Biography" (1881), and in the editorial columns of the San Francisco *Bulletin* of March 10, 1886.

Charles P. Eells received his education at the old City College in San Francisco, the Oakland College at Oakland, California, the Poughkeepsie Military Academy at Poughkeepsie, New York, and Hamilton College at Clinton, New York. He prepared for the bar in San Francisco; was admitted to the bar by our State Supreme Court, April 11, 1877, and began practice in 1879 at San Francisco, where he has always since pursued it. He has had much success at the bar, and for the greater part of the time has been in partnership with Charles Page and other able men of the metropolis bar. He is a cultured man, and learned and accomplished in his profession. He is tall in stature, strongly built, full of life, and fond of out-door diversions, rambles in the country, fishing, hunting, etc., to which addiction so many hard-working lawyers owe the preservation of sound minds in sound bodies.

Mr. Eells was a member of the San Francisco board of education for the years 1899-1900.

MORRIS M. ESTEE.

Morris M. Estee, the first United States Judge of the Hawaiian Islands, was born in Warren county, Pennsylvania, November 23, 1833. He was a farmer's son. His education during his minority was obtained at the public schools of his county, and at Waterford Academy. The last named institution he attended for a year. His winters, between his sixteenth and twentieth years, were passed in teaching in his native county. In 1853 he came to California, arriving at San Francisco by way of Panama, in September. He was then twenty years old, and had borrowed of a neighbor in Pennsylvania his passage money, upon a promise to pay back double the sum in six months. After vain efforts to get employment in San Francisco, he went to the mining region before mentioned, and was enabled from his earnings with the pick to remit to his creditor in Pennsylvania double the sum he had obligated himself to pay, within the time limited.

It was in the year 1859 that Mr. Estee was admitted to the bar of the Supreme Court. He practiced law at Sacramento from that time until the year 1866. During that period he received some signal tokens of the respect and confidence of the people. In the legislative session of 1863-64 he represented Sacramento in the assembly. In the fall of 1864 he was elected district attorney, and served the term of two years. The emoluments of that office were considerable. Upon leaving it, Mr. Estee removed to San Francisco. Before this change of location, he had invested to some extent in San Francisco business property.

The removal to San Francisco was in 1866. After a year's association with ex-Judge E. H. Heacock, Mr. Estee practiced in partnership with John R. McLaurin for about three years, when Mr. McLaurin died. Mr. Estee and ex-Judge John H. Boalt then became associated under the style of Estee & Boalt. This union lasted prosperously for about ten years. Shortly after its dissolution, Mr. Ramon E. Wilson joined Mr. Estee, and some years later Mr. E. J. McCutchen entered the firm, the style of which was Estee, Wilson & McCutchen down to 1892. Then for some three years Mr. John H. Miller was Mr. Estee's associate. After that Mr. Estee practiced alone.

Mr. Estee is a Republican in politics, and as such was elected to the public places he held in Sacramento. He became even more prominent in the councils of his party after he removed to San Francisco. When Newton Booth was nominated by the Republicans for Governor in 1871, and entered upon his brilliant and successful canvass for that office against the incumbent, Hon. Henry H. Haight, Mr. Estee was made secretary of the Republican State Central Committee. For the zeal and ability he displayed in that position, his party showered upon him its applause. But two years later there was a serious division in his party ranks; and in the general election (which was for members of the legislature and county officers), Mr. Estee and Hon. John Swift were among the Republican leaders who followed Governor Booth into what some would call a revolt against the regular organization, while others would declare it a revolution. These gentlemen led an independent movement, which carried the legislature, and elected Governor Booth to the United States senate. Mr. Estee led the San Francisco delegation in the assembly, and was made speaker of that body. In that position his urbanity, ability, and decision were constantly displayed.

The Independent party dissolved within a year into its original elements, and Messrs. Booth, Swift and Estee were soon in full Republican fellowship again. At the legislative session of 1877-78, Mr. Estee was the Republican caucus nominee for United States senator, but the Democrats were in the majority and elected James T. Farley.

Mr. Estee was a leading member of the last constitutional convention of this State (1878). He was elected as a non-partisan from the State-at-large. He was made chairman of the committee on corporations of the convention, and prepared the report of this committee on the important work by it accomplished. It is noteworthy that he was the only one of the eight delegates from the San Francisco district representing the State-at-large, who supported before the people the new constitution adopted in 1879.

In the year 1880 Mr. Estee was elected one of the freeholders entrusted by the people with the task of framing a new charter for San Francisco, his legal residence being in that city at that time. The instrument framed by this charter convention was rejected by the people.

Mr. Estee was the Republican candidate for Governor of California in 1882, but the Democrats, under the lead of General Stoneman, were successful in that campaign. He was the candidate again of his party for that office in 1894, when the Democrats elected Hon. James H. Budd.

The most distinguished place, perhaps, that Mr. Estee has ever held, in that it attracted to him and to his State the eyes of the whole country, was that of President of the National Republican Convention of 1888. His latest public trust was as a delegate to the Congress of Nations of North, Central and South America, which opened at Washington, D. C., on the 4th of October, 1889.

Mr. Estee is a prominent Mason and Odd Fellow, and was a representative in the Supreme Lodge, I. O. O. F., that sat at Baltimore in 1869. He married in February, 1863, Miss Frances Divine, daughter of Judge Davis Divine, of San Jose, and has two daughters.

Mr. Estee is of striking personal appearance, above the average height and weight, and of most agreeable address and presence. As a public speaker and at the bar he is entertaining and convincing, always dignified, and leaving the impression of sincerity. Besides his forensic efforts, he has delivered some of the ablest addresses ever heard at our agricultural fairs and at Fourth of July celebrations. He has the ability to weigh evidence—not in law suits merely, but in matters that divide men generally—to separate facts from fiction, to get at the truth, and support the better cause.

After a long period of uninterrupted success at the bar, and distinction in public life and politics, Mr. Estee was just at the zenith of his powers of mind, when President McKinley appointed him the first United States Judge of the Hawaiian Islands, in June, 1900.

The title of Justice Estee's office is that of "United States District Judge for the Territory of Hawaii."

Under the act of annexation, the Hawaiian Islands were formed into a district to be known as the District of Hawaii, and to be attached to the Ninth Judicial Circuit. The functions of the District Judge there are the same as those of the district judges in this country, except that he is given the same powers in appeal as are held by the circuit judges. In addition to the ordinary powers of the district judge, therefore, the district judge of Hawaii is empowered to perform the duties of a circuit judge over that district.

Sessions of the court of the District of Hawaii are held in Honolulu in October and in Hilo in January of each year.

Judge Estee's nomination was sent by the President to the senate on June 2, 1900, and was promptly confirmed. He sailed from San Francisco for Honolulu early in August, 1900, and opened the new court there in the same month. He was banqueted by a numerous body of leading citizens of San Francisco just before his departure. At Honolulu he was welcomed most cordially by the whole bar. His duties bring him to San Francisco twice a year to attend the United States Circuit Court of Appeals.

OLIVER P. EVANS.

Oliver Perry Evans, one of the judges of the Superior Court of San Francisco, chosen at the first election under the present constitution, was born in the State of Virginia, and is now fifty-eight years of age. He was liberally educated, and began his professional career in San Francisco in 1868. He was in partnership with ex-Chief Justice John Currey for a period of eight years, ending on the first of January, 1878. Judge Currey, who then retired from active practice, speaks of this long association with much satisfaction.

Judge Evans was elected a judge of the Superior Court in the fall of 1879, and took the bench in January, 1880. In August, 1883, having served three and a half years, he resigned, and resumed law practice. He then entered on a valuable business of a general character. His connection with the Sharon divorce case is mentioned in the article on that litigation in this History. He has been associated since 1898 with John H. Meredith, who is also a Virginian, and a lawyer of subtle and sagacious mind.

Judge Evans is a man of family. Personally, he is of giant frame and harmoniously built, now, apparently, more than ever, in the flower of manly health, and is of striking presence.

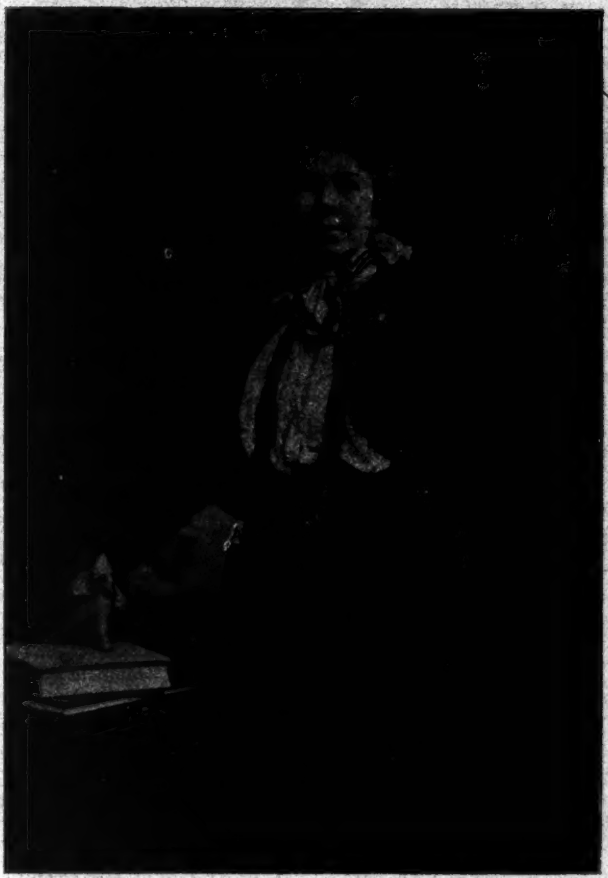
CLARA SHORTRIDGE FOLTZ.

Clara Shortridge Foltz is the only daughter of Elias W. Snortridge, who was a minister of the Christian, or Campbelite, Church. She springs from an old American family, and was born in Henry county, Indiana. Her family has always been noted for mental and physical vigor and uncompromising virtue. Her father acquired distinction as an orator. His four sons, widely separated by circumstances, are leading men in the communities in which they live.

Mrs. Foltz went to school only three years—from eleven to fourteen years of age—at Howe's Seminary, Mount Pleasant, Iowa. At the age of sixteen she figured in a Gretna Green match, uniting her fortunes with a young Pennsylvania German.

Her husband removing to Portland, Oregon, she rejoined him there in January, 1872, with a babe of nine weeks. Not long afterwards they removed to San Francisco.

Mr. G. W. Lamson, still practicing at Portland, who had come to know her well, and had been struck with her strong intellect, her ready wit, and her facility of speech, visited her one day, and presenting the complete commentaries of Kent, said: "I wish you would take these books and read them; I think you would make a good lawyer."



Clara Shortridge Foltz

She took the books and commenced her life work. She did most of her law reading in the law office of C. C. Stephens, of San Jose, California. She was admitted to practice in the Twentieth District Court at San Jose, September 5, 1878, after passing an examination by Judge F. E. Spencer and Messrs. Stephens and Harrington. She obtained some professional business very soon, but, before trying to establish a practice, removed to San Francisco for the purpose of further pursuing her studies in the Hastings Law College. She here found herself at once confronted with obstacles of a serious character, which put to a severe test all her pluck, fortitude and ability. Applying to Judge Hastings, the founder and dean of the college, for permission to attend the lectures, she was told she could do so, subject to the decision of the directors. After attending three lectures she received a notice from the registrar that the "Directors had resolved not to admit women to the Law School."

At the session of 1878 the legislature had amended the section of the code of civil procedure regulating the admission of attorneys and counselors in all the courts of the state. The section originally read: "Any white male citizen," etc.; as amended it read: "Any citizen or person," etc. This amendment was drafted by Mrs. Foltz, who visited the capitol, and watched its fate with maternal solicitude. Senator Murphy, of Santa Clara, introduced it in the upper house, which it passed by a fair majority. Mrs. Foltz was then called to Oregon to address the State Woman Suffrage Association. In the assembly her measure was strongly opposed by Mr. Murphy of Del Norte, and was defeated. Mr. Grove L. Johnson of Sacramento moved a reconsideration, and meanwhile Mrs. Foltz was again on the battlefield. After much argument and personal entreaty, she had the pleasure of seeing the section as amended pass the assembly, on reconsideration, by one majority. In her enthusiasm and anxiety, she invaded the room of Governor Irwin, and urged him to yield his signature. She was gently checked with the assurance of his excellency that, "when the bill reached him he would examine and consider it." It received the executive signature two minutes before midnight, the hour of final adjournment of the legislature, and was the last bill signed.

In January, 1879, Mrs. Foltz presented to the Fourth District Court her certificate of admission to the bar of the Twentieth district, and asked for a license from the first-named tribunal. Judge Morrison, presiding, denied the application, and appointed a committee (W. W. Cope, J. B. Lamar, and Sidney V. Smith) to examine Mrs. Foltz as to her qualifications. The report of the committee was favorable, and the applicant was then duly admitted.

Now for college. Strengthened by her Fourth district license, the struggling woman now paid immediate attention to the little note from the registrar of Hastings Law School which she had received some three weeks before. Judge Hastings himself, Professor Pomeroy and the directors were of one mind, that she had no legal right to admission to the institution, and that it would be unwise to receive her, her presence, in their judgment, being calculated to distract the attention of the male students. Mrs. Foltz applied to the Fourth District Court for an alternative writ of mandate to compel the directors to admit her as a student in the college. She made a well-considered argument in support of her application, basing her claim upon the fact that the law college was a branch of the State University, and that the right of women to enter the uiversity was unquestioned, several having graduated therefrom. She declared that it would be an anomaly in legislation to permit women to practice law in all the courts and yet establish a law school from which they should be excluded.

Two leading members of the bar replied to Mrs. Foltz, but the decision was in her favor.

The directors appealed, and she was kept out of the college for a year. In the meantime, she appeared before the Supreme Court as an applicant for admission to the bar of that tribunal, and, after a public examination, the third passed by her, she was admitted. She was one of a large class of applicants, many of whom were rejected. A few weeks later she argued in the Supreme Court her mandamus case on appeal. She was complimented from the bench, and when the court adjourned one of the Judges, who had known her in San Jose, honored her with the words, "You are not only a good mother; you are a good lawyer. I have never heard a better argument, for a first argument, made by any one."

By the final judgment of the appellate court (Foltz vs. Hoge, 54 Cal., 28) the doors of the Hastings Law College were thrown wide open to woman, and Mrs. Foltz, at the close of a brilliant campaign, took her coveted seat.

Before her contest in the State courts, Mrs. Foltz had created quite a flutter in San Jose, among the legal juniors. They had a lively moot court, called the Legal Club. The lady sought membership in it, and at once the club was divided against itself, and soon went to splinters.

Mrs. Foltz was clerk of the judiciary committee of the assembly in 1880. With the exception of the period covered by that session, and about three years at the New York City bar (1896-98) she has been practicing law in San Francisco since her admission. The most noted case with which she has been connected was that of Wheeler, indicted for murder, and convicted. She appeared for the prosecution, and addressed the jury. She has had no law partner. Frequently she is called to the interior on business. For her chosen profession she has the most enthusiastic devotion. In court she is self-reliant, her argument is terse and condensed, her speech fluent. Having a good voice, engaging manners, and dressing with excellent taste, displaying constant evidence of strict and careful parental

training, and wearing always the jewel of true womanhood, she has become a favorite of the bar, whose leading members are pleased at all times to give her counsel.

By her womanly graces, as well as by her studious habits and patient struggles, she has won the undivided esteem of the entire profession. They have got through laughing at her. She can defend herself. She anticipated frequent occasion to do so when she commenced going into court. But she has rarely met frowns or sneers. She is overflowing with life and humor and is quick at repartee. An opposing attorney once suggested to her in open court that she had better be at home raising her children. She replied: "A woman had better be in almost any business than raising such men as you."

Madge Morris once wrote to her in sweet verse:

"If faltered ere that heart of thine,
It ached, but gave the world no sign."

And again, in the same poem:

"Thy voice hath argued in debate,
In scathing satire, sharply fell;
In forum, and in hall of state,
Held listening thousands with its spell;
Then dropped its tones to softest keep,
And crooning sang a babe to sleep."

Closing with lines since often quoted in newspapers and magazines:

"And thou hast proved that woman can,
Who has the nerve and strength and will,
Work in the wider fields of man,
And be a woman still."

Dr. Charles Gridley Toland, of San Francisco, and Miss Trella, daughter of Mrs. Foltz, were united in marriage at San Diego, California, in October, 1888.

E. A. FORBES.

Edwin Alexander Forbes was born July 20, 1860, at the mining town of Brandy City, Sierra county, California. His parents were foreign born. His father, Alexander R. Forbes, came from Scotland, and was raised in Canada. He was a blacksmith and a miner until 1867, when he moved to Yuba county, in this State, and engaged in farming and stock-raising until his death in 1897. The mother, whose maiden name was Catherine Kraker, was born in Germany, and came to this country at twelve years of age. She was educated in the schools of the United States. The ancestors on the father's side were soldiers for many generations among the Highland regiments of the British army—chiefly the Gordon Highlanders, wherein the grandfather served twenty-one years, taking part in many memorable battles, among them Waterloo.

At the age of seven years E. A. Forbes moved with his parents from the old mining camp of Brandy City to the Oregon House Valley, in Yuba county, where his father purchased a ranch, and from then until he was eighteen years of age, he worked on the farm and in the blacksmith shop. He rode the ranges after stock, and attended the public schools during the portions of the year when they were open. As soon as his age would permit under the law, to-wit, eighteen years, he attended the teachers' examination and obtained a first-grade certificate to teach school, standing second in a class of twenty-four applicants. He then taught for three years in Yuba county. On arriving at majority, with his savings he entered the law department of the State University. By teaching school during vacation, and, when he could not get a school, by working in the harvest fields, and by clerking in a law office in San Francisco, he managed to stay through his term, and was graduated from Hastings Law College in May, 1884. He then went to Marysville, California, and opened a law office in June, 1884. He received the nomination for district attorney of Yuba county ,in July, and was elected in November of the same year. He held the office of district atotrney of Yuba county for four terms, until 1892. Entering into partnership with Wallace Dinsmore, his present partner, in 1885, they have practiced law in Marysville ever since, the firm name being Forbes

& Dinsmore. They do a large corporation, probate and criminal practice. Mr. Forbes has been engaged in most of the noted criminal cases in Northern California for many years. He has always taken a prominent part in military affairs, belonging to the National Guard since 1880, and now being lieutenant-colonel of the Second Infantry Regiment, N. G. C. He served during the railroad strikes of 1894, and volunteered during the Spanish-American War, and was commissioned as major of the Eighth California Regiment of Infantry, United States Volunteers. He is one of the crack shots of the National Guard, and when captain of the Marysville company in 1895, broke the world's record at target shooting with fifty men. During the Spanish-American War his regiment was not called out of the country, but owing to his administrative military ability he was given more important military commands than any volunter officer on the Pacific Coast, having been sent to command the important post

Wm. H. Fifield

of Vancouver Barracks, where he was in command of the First Battalion of his own regiment and the troops of Oregon and Washington, and a detachment of Regulars. He was also in command of the troops at Angel Island and Benicia, California.

Colonel Forbes has also always taken a leading part in politics. He was chairman of the Republican State convention at Sacramento in 1900, and appointed the executive committee of the Republican party which so successfully handled the Presidential campaign of that year. He was defeated for the nomination for congress from the Second district of California, by one vote, at Santa Cruz, in 1900. The Colonel takes great interest as well in public affairs. He formed the Brown's Valley Irrigation district, and brought the waters of the Yuba River over the dry foothills of Yuba county. He negotiated the sale of the famous Brown's Valley mines, and was active in interesting capital in the development of the wonderful power resources on the Yuba River, which resulted eventually in the creation of the greatest electrical plant in California, the Bay Counties Power Company's plant.

Colonel Forbes is president of the board of agricultural directors of his district; president of the Marysville Chamber of Commerce, and vice-president of the Sacramento Valley Development Association, besides being president of several private corporations. He ranks as one of the leaders of the bar of Northern California. His success in legal, civil, political and military life comes from his intimate knowledge of men and the use of practical judgment in all matters, aided by a tenacious determination to carry out whatever he undertakes. He was married in November, 1884, to Miss Jennie Yore, by whom he has two children, a daughter of fifteen, and a boy of eight years.

WILLIAM H. FIFIELD.

William Henry Fifield, so long prominent at the San Francisco bar, and always associated with men of the first ability, was born February 8, 1843, in Jackson county, Michigan. Both of his parents were born in New Hampshire. He received his early training and preparation for college in the public schools of his native place. He entered the University of Michigan at Ann Arbor in the fall of 1861, and was graduated with his class in 1865, receiving the degree of Bachelor of Arts.

Immediately upon his graduation he entered upon the study of the law in the summer of 1865, in the office of Hon. Austin Blair at Jackson, Michigan, who was the war Governor of that state, and a distinguished member of its bar.

In the fall of that year Mr. Fifield returned to the university and attended the law school during the session. He returned home in the spring of 1866, and continued his legal studies with Governor Blair until December, 1866, when, upon examination, he was admitted to practice in all the courts of the state, and in the Federal courts at Detroit.

He continued with Governor Blair until August, 1868, when he started for California, by way of Panama. He arrived in San Francisco on September 25, 1868, and on October 1, 1868, opened an office in that city, where he has practiced his profession continuously ever since, a portion of the time in partnership with others, and the balance of the time alone. At present he is a partner of James Thomas Boyd, under the firm name of Boyd & Fifield.

Mr. Fifield has never held any public office, but during the years 1898 and 1899 he was president of the San Francisco Bar Association. He is one of the most gifted and industrious men at the bar of the State, and has many fine social qualities.

JOHN F. FINN.

John F. Finn was born on the island of Cuba, in 1839. We have known him, in California and Nevada, for about forty years. He settled at San Francisco about the year 1864. In 1867-68 he was the attorney for the public administrator, William A. Quarles, and later for public administrator Simon Mayer. He was defeated on the Republican ticket for justice of the peace in 1869. At the first election under the present constitution, in 1879, he was chosen, as a Republican, one of the twelve Judges of the new Superior Court, and drew a one-year term, which he served. The proceedings in the great Blythe estate, and those in the Sharon divorce case were begun before him, but were soon transferred to other departments. The Judge was elected his own successor for a full term of six years in the fall of 1880, and again for a full term in the fall of 1886. In January, 1893, after thirteen years on that bench, he voluntarily retired.

At the same time Judge Finn retired from the profession of law. He was always a provident man, of excellent life, and is in the enjoyment of a fortune. He has a wife, but no issue. He and Mrs. Finn spend the greater part of their time in travel. A letter which we received from him recently shows that they are passing the winter of 1900-1901 in the south of France.

L. H. FOOTE.

General Lucius H. Foote, who has had such a long public career, marked by uninterrupted good fortune, was a practicing lawyer at the capital city in the fifties, and in San Francisco a generation later. The General is one of the men of our bar to whom we have several times referred, who were born in the year 1826. The month and day were April 10, and the place Winfield, Herkimer county, New York. He was educated at Knox College, Illinois, and at Western Reserve College, Ohio. He came to California in 1853, and located at Sacramento where he was admitted to the bar in 1856. He immediately entered upon his protracted public service. He was Justice of the Peace in the city named, in 1856-57-58; Police Judge in 1859-60; collector of the Port of Sacramento, appointed by President Lincoln,

in 1862-63-64; State adjutant-general, under his warm personal friend, Governor Newton Booth, in 1872-73-74-75, and a delegate to the Republican National convention which nominated Hayes and Wheeler, in 1876.

In the latter year General Foote removed to San Francisco. He was appointed by President Hayes United States Consul to Valparaiso, Chile, and served as such for four years —1877-1880. President Garfield appointed him United States Minister to Corea, which position he held for the years 1881-82-83. He then returned to San Francisco. In 1891 he became secretary of the California Academy of Sciences, of that city, and treasurer of that great and (thanks to the munificence of James Lick) flourishing institution.

The General, who is a man of culture and distinguished presence, possesses literary ability of a high order. He has been writing for forty years in prose and verse, to the delight of the world of letters. In life's evening he is still sunny-tempered, as we remarked of Holladay. He is well off.

"The sea, the sky, the landscape, all belong
To him who lifts on high his heart in song."

HENRY L. FORD.

Henry L. Ford was born May 15th, 1860, at Noyo, Mendocino county, California. His father was Captain Henry L. Ford who came to California in 1842. Captain Ford took a prominent part in the Bear Flag rebellion, and designed the bear that was painted on the flag that was raised in Sonoma county in 1846. He was also commander of one of the companies in that rebellion. Captain Ford was accidentally killed while his son was a small child. The widow then married Archibald P. Osborn, a veteran of the Mexican War. Mr. Osborn moved to Humboldt county in 1864, and

was one of the pioneers of that county. He served as first sergeant in Company A, California Volunteers, and held numerous township and county offices. His death occurred in 1894.

Mr. Ford conceived the idea of being a lawyer when he was about eighteen years of age. From his own earnings he purchased his law books with which to begin study. As to what books to read he was advised by Hon. J. J. DeHaven, the present United States District Judge. In January, 1887, he located at Eureka and entered the law office of Hon. E. W. Wilson, who is now presiding Judge in Department Two of the Superior Court of Humboldt county. It is to the kindness of Judge Wilson that he owes much of the success he attained in after years. In April of that year he was admitted to practice in the courts of this State. From that time he advanced rapidly into prominence and is now one of the leading lawyers of Northern California. Mr. Ford expresses it as his opinion that Humboldt county has the brightest, best and kindest assemblage of lawyers in the State; that both judges and lawyers treat each other as if they were all members of one fraternal organization, having for its aim and end the prosperity and happiness of its members.

On May 1st, 1889, Mr. Ford was joined in marriage with Miss Nellie Woodlee, a daughter of Henderson Woodlee, a pioneer of Humboldt county. In July, 1897, Judge De Haven, of the United States District Court appointed him United States commissioner, which office he still holds. He has a large practice in the courts of three counties. It is claimed for him that he has the largest practice in Humboldt. He owns an extensive and costly and well-selected law library.

TIREY L. FORD.

Tirey L. Ford was born in Monroe county, Missouri, December 29, 1857. He was raised on a small farm, attending the district school in winter and laboring on the farm in summer. By working mornings, evenings and Saturdays, he managed to attend the high school at the county seat of his county, from which he was graduated in June, 1876. He came to California in February, 1877, and worked as a farm hand on different ranches in Colusa and Butte counties until January, 1880, when, having laid by a few hundred dollars, he entered the office of Park Henshaw in Chico, where he studied law. In August, 1892, he was admitted to practice by the Supreme Court of this State.

General Ford began the practice of law in Oroville, but removed to Downieville, Sierra county, in January, 1885, where he soon built up a splendid practice. In 1888 he was elected district attorney of Sierra county and was re-elected in 1890.

In 1892 he was elected State senator, representing the counties of Plumas, Sierra and Nevada at the sessions of 1893 and 1895.

In April, 1895, he was employed by the board of state harbor commissioners at San Francisco to attend to their legal matters. He continued to act as the attorney for the board until elected attorney-general. This was at the general election in November, 1898.

As State senator, General Ford secured a considerable amount of legislation which was desired by the miners, and became quite intimately identified with mining interests in gen-

eral. As attorney for the board of state harbor commissioners he was exceptionally fortunate in having his opinions upheld by the courts wherever the same became the subject of judicial investigation. He also recovered for the State a strip of land on Chan-

nel street on the water front in San Francisco, which had been occupied by the Southern Pacific Company for some twenty-five years, and which had been the subject of legal investigation by his predecessors, but concerning which nothing definite had been done until he finally brought the matter to a successful conclusion in the courts.

What our subject has done as attorney-general is too recent to need recapitulation here. His opinions have been almost uniformly upheld by the courts and rarely has he lost a contested case. In one instance he saved the State something like a quarter of a million of dollars. Before he took his present office the Supreme Court, through one of its departments, had decided against the State in the matter of the Stanford inheritance tax. General Ford secured a re-hearing and argued the matter before the court in banc. The court finally rendered its decision in favor of the State, which involved the payment by the Stanford estate of about a quarter of a million of dollars into the State treasury.

The suit which he recently brought for the board of railroad commissioners against the Southern Pacific Company to compel that company to restore its lowered rates between San Francisco and Fresno and other San Joaquin valley points, resulted in a judgment against the railroad company. The case was on appeal to the Supreme Court at the time of this publication.

In April, 1900, General Ford had occasion to go to Washington, D. C., to argue a railroad tax case before the United States Supreme Court. The case involved taxes due by the Santa Fe Railroad Company to the State of California. The Supreme Court decided the case in favor of the State and against the railroad company, thus enabling the General to score a victory of which he has just cause to feel proud.

General Ford is extremely modest in discussing his unusual success in professional and political life. His friends, however, do not hesitate to give him full credit for the energy and ability upon which his success has been built.

JOHN E. FOULDS.

This well-known figure is seen almost every day in the law-world of our chief city, in the beaten track of toilsome achievement. He has been quietly trying cases for the great railroad companies for more than twenty years. For a considerable period he was employed in the lower courts, but redeemed the time, and gradually pressed into conspicuous place, until now his printed arguments are thick among the files of the Supreme Court. We well recall occasions, in the late '70s, when we saw him before justices of the peace, passing his novitiate in unobtrusive yet ambitious effort. He has literally worked his way up the height.

Mr. Foulds began his business life as a phonographer. He came to San Francisco in 1871, with a view to following that avocation. He soon secured a position in the offices of the old Southern Pacific and Central Pacific Railroad Companies as shorthand writer and clerk. This position he retained for some years after his admission to practice law. After a full course of reading he was admitted to the bar of the State Supreme Court in 1876. His transition to the more trustful relation of attorney was not sudden nor experimental. He handled small cases in court while yet nominally a law clerk. It was in 1879 that he became one of the regular attorneys of the Central Pacific. In 1881 the Southern Pacific Railroad Company was also his client, and when, in 1885, or thereabouts, the Southern Pacific Company was formed, leasing the lines of the Southern Pacific Railroad, the Central Pacific Railroad, and other railroads, Mr. Foulds became one of the regular attorneys of the later corporation. In 1888 he turned to practice on his own account, and in the next year became associated with Carroll Cook, now Superior Judge, under the style of Carroll Cook and J. E. Foulds. After two years this partnership was dissolved, and Mr. Foulds returned to his old place in the law department of the Southern Pacific Company, which he still holds.

Mr. Foulds' latest case on behalf of the railroad company was the important and interesting one of the Board of Railroad Commissioners against the Southern Pacific Railroad Company, and the Southern Pacific Company, in which the defendants were charged with violation of the State constitution in reducing an established rate for the purpose of meeting competition, and thereafter raising the same without the consent of the Railroad Commissioners. On the appeal by the defendants, their cause was presented by Mr. Foulds and John Garber, Mr. Foulds making the opening argument, and Judge Garber closing—September, 1900.

Mr. Foulds is a native of England, born in 1848. His home is in Berkeley.

A. C. FREEMAN.

A. C. Freeman, who has long enjoyed a national reputation as an author of law books, was born in Illinois, May 15, 1843. He came to this State long prior to becoming of age, and lived on a farm in Sacramento county. He went to the capital city during the great flood of the winter of 1861-62, and took up the study of his life. In 1865 he was admitted to the bar of the Supreme Court. His first law-book, "A Treatise on Judgments," appeared in 1873. His various other works are named in the list of California law books elsewhere in this History. On the death of John Proffatt, LL. B., he was engaged by the publishers of "American Decisions," his work in that series beginning with volume 12.

Mr. Freeman removed to San Francisco in 1885. He has always since been occupied there, not only in writing and editing law books, but in the active practice of law. He is the editor of the Bancroft-Whitney Co.'s publications. He is no mere theorist, but eminently practical, well-grounded, as will be readily accepted in legal science and of indisputed ability and skill in the trial of cases, as well as in their presentation and argument. From a business standpoint, also, his career has been one of marked success. He has amassed a fortune, and has in his charge, as legal adviser or attorney, the affairs of many corporations and solid men of both the metropolis and the capital.

FRED W. FRY.

Fred W. Fry was born on a farm in central Michigan, October 13, 1857. At the age of seven years he moved with his parents to Leslie, in that state, where, at the age of twenty years, he was graduated from the Leslie High School, after having completed a three-years' classical preparatory course for the Ann Arbor University. After completing his education he acted on the Greeley motto, "Go West," and moved to western Kansas and sought the illusive wealth from the rich prairie lands there so promising; but, after three dry years in succession, he returned to Michigan for new start, and, after a little financial recuperation from school teaching and kindred lines of employment, he shook the Michigan dust from his shoes the second and last time. On September 30, 1885, he landed in Oakland, California, with his family, empty-handed, but with a wealth of energy and determination.

Mr. Fry had always cherished the hope of engaging in the practice of law, and had spent his spare time (something on the Lincoln style) in the study of Blackstone. A chance acquaintance with Hon. M. C. Chapman resulted in an invitation to Mr. Fry to share Mr. Chapman's office and use his library. Mr. Fry, from this time on, gave his entire time to the study of law, and was known among his limited circle of acquaintances as a close and forcible reasoner and as an exceptionally hard student. After a highly creditable examination before the Supreme Court of the State of California, on the 2d day of August, 1887, and as a member of a large class then seeking admission to the bar, he found his name first on the list of successful aspirants. Subsequently he was admitted to practice in the Federal courts, and, after one year more with Mr. Chapman, he formed a partnership with Hon. C. G. Dodge, which continued up to four years ago. Since that time Mr. Fry has conducted a well-equipped office in Oakland, and met with signal success in the profession. His practice has been extensive and varied, and has led him into every branch of the law and into all State and Federal courts. He has a special liking for constitutional questions, and has frequently been employed by the Merchants' Exchange of Oakland, and others, to test the validity and constitutionality of ordinances. In that line of cases he has an unbroken record of success.

L. C. GATES.

Mr. Gates was born in Preble county, Ohio, April 4, 1856. He was educated in the common schools of Ohio and Indiana, supplementing a very desultory training by teaching for some six years. He never attended a college or law school. He began to read law in the office of Lee Brumbaugh, at Miamisburg, Ohio, in 1879. After Mr. Brumbaugh's death, which occurred in 1880, Mr. Gates entered the law office of Nevin & Kumler, at Dayton, Ohio. He was admitted to the bar in May of 1881, by the Supreme Court of Ohio. After practicing law for three years at Miamisburg, he was compelled to abandon the practice on account of ill health, brought on by overwork. He believed at the time that he should never return to the practice again. Removing to Kansas in 1885, he took up the business of stock raising, at which he continued for three years, when he was again drawn back into the ranks of the profession, beginning anew the practice at Eldorado, Kansas. In 1892 he removed to Los Angeles, California, to take charge of the legal business of the Los Angeles Abstract Company. This connection has continued with that company and with its successor, the Title Insurance & Trust Company, to the present time. During all his period in Los Angeles he has devoted his entire time and attention to the law of titles to real estate. His efforts in that direction have been attended with a great degree of success.

HENRY T. GAGE.

We have seen that the first Governor of the State was a lawyer; and so is the latest, and twentieth. The lawyers embrace just one-half of the whole array—if we place Bartlett among the number and leave Booth out. Bartlett and Booth were admitted to the bar. Booth never practiced. Bartlett can hardly be connected with the profession. He was early a printer, and late secretary of the San Francisco Chamber of Commerce, and for sixteen years in various public offices.

Henry T. Gage

Governor Gage is the fifth resident, and the second lawyer, of Los Angeles county, who has occupied the executive chair. John G. Downey was Governor in 1860-61; George Stoneman, 1883-86; R. W. Waterman, 1887-90, and H. H. Markham, 1891-95. Downey and Waterman were elected each as lieutenant governor, but were called to fill vacancies, and served nearly full terms.

Henry T. Gage was born near Geneva, New York, in November, 1853. He grew up in the state of Michigan, whither his parents had removed, and received a good education. He began the practice of law at Los Angeles, in 1877, at the age of twenty-four. It was just at the dawn of an era of unexampled activity and prosperity in that city and section, and he made good use of his abilities and opportunities. He acquired very soon a good law practice, which grew larger and larger for many years. Early entering into politics on the Republican side, he became, by reason of his strong personality and general capability for leadership, a controlling spirit in the councils of his party, presiding over committees and conventions, and helping to shape platforms and make tickets. He was a delegate to the National Republican convention at Chicago in 1888. In that body, as the selected spokesman of the California delegation, he made a speech seconding the nomination of Levi P. Morton for the Vice-Presidency, and was otherwise prominent.

Governor Gage never served in the legislature. Only eight of our twenty Governors passed through that body. He was nominated as a man who was distinguished at the bar, successful in business, a student of public questions, and one of the ablest and most aggressive exponents of party principles. He was elected to his present high office in November, 1898, his Democratic opponent being James G. Maguire.

THOMAS J. GEARY.

Thomas J. Geary, who was a representative in congress from the First California district for a fractional term and two terms—from December, 1890, to March 4, 1895—was born in Boston, Massachusetts, January 18, 1854. He came with his parents to California in April, 1863, the family settling at Santa Rosa. There Mr. Geary was reared and educated, and prepared for the bar. He was admitted to practice by the Supreme Court in 1877, and was occupied with his profession at Santa Rosa from that time until he took his seat in congress in 1890. He was elected, as a Democrat, district attorney of Sonoma county, in 1882, and served the term of two years, 1883-84. He was elected, as a Democrat and American, to the closing session of the Fifty-first congress in November 1890, to fill the vacancy caused by the resignation of John J. DeHaven. At the same election he was chosen as representative in the Fifty-second congress, which met on March 4, 1891, and was re-elected in November, 1892, to the Fifty-third congress, as a Democrat and American, receiving 19,306 votes against 13,123 votes for E. W. Davis, Republican.

Mr. Geary removed to Nome City, Alaska, in the summer of 1900. He bore a high reputation for general ability at the bar, and was very widely known, and in the new camp promptly took first place. Important litigation begun there, in which he was employed, and which was carried to the Federal courts in San Francisco, caused his return to that city in the following fall, and he wintered there.

An article by Mr. Geary on the Chinese question appeared in the *North American Review*, of July, 1893.

J. N. GILLETT.

J. N. Gillett was born in Sparta, Wisconsin, in 1860. He was admitted to practice in that state in 1881. He came to California in 1884, and located in Eureka, Humboldt county, where he has ever since resided.

Mr. Gillett was elected to the State senate in November, 1896, and was chairman of the judiciary committee, at the session of 1897. He has a large and lucrative practice, and is the attorney for large corporative interests in Humboldt county. He is a very excellent man and lawyer, who has done a good part by his profession and his State.

ANDREW GLASSELL.

This long-honored citizen of Los Angeles, who retired from the bar many years ago, was born in Virginia, September 30, 1827. His father, Andrew Glassell, and his mother, Susan Thornton, were also natives of that state, and were married there. His grandfather, Andrew Glassell, the first of his paternal line to settle in America, emigrated to Virginia from Scotland, his country.

Our subject removed with his parents to Alabama when he was seven years old. The father engaged in cotton planting, and the son was well educated, graduating from the University of Alabama in 1848. He was admitted to the bar of the United States Supreme Court in 1853. Coming to California in that year, and presenting to our State Supreme Court a complimentary testimonial letter from Hon. John A. Campbell, a Justice of the Supreme Court of the United States, he was admitted to practice here without the formality of an examination. Soon afterwards he was appointed deputy United States district attorney at San Francisco. He held the position for about three years, which period was principally spent in trying a large number of accumulated land cases in the United States District Court. He then engaged in private law practice until the Civil War opened. He then withdrew from law business, like Solomon Heydenfeldt, Gregory Yale, E. J. Pringle, and other distinguished men of Southern birth, and Volney E. Howard, of Los Angeles, who was a Southern man in sympathy.

Mr. Glassell then went into the business of manufacturing staves in Santa Cruz county. He had a steam sawmill, and employed a large force of men. When the war was concluded he settled at Los Angeles, and resumed the practice of law, in partnership with Alfred B. Chapman, a former captain in the regular United States Army. The firm name was Glassell & Chapman. George H. Smith, who had been a colonel in the Confederate Army, joined the firm when it was about three years old, and the name became Glassell, Chapman & Smith. This continued to the year 1880. In that year Captain Chapman withdrew, and went into orange growing on a large scale, on a fine estate, near San Gabriel. Mr. Glassell also retired in 1887 with a considerable fortune, which has largely increased in the years since flown.

Mr. Glassell married, first, a daughter of the great San Francisco physician, H. H. Toland. She died in 1879. There were nine children of this union. All were living a few years ago, and are still, we believe. The present Mrs. Glassell, who was married in 1885, is a daughter of William C. Micou, an eminent lawyer of New Orleans.

Since the above was written, Mr. Glassell died at his home in Los Angeles, January 27, 1901.

HIRAM L. GEAR.

Hiram L. Gear was born in Marietta, Ohio, December 1st, 1842. He graduated from Marietta College in 1862, with honor, and was chosen as a member of the Phi Beta Kappa Society. He came to California in 1863, and was admitted to the bar of the District Court,

in Downieville, Sierra county, before Hon. I. S. Belcher, District Judge. He married a daughter of Judge P. Vanclief, and practiced law in partnership with that eminent jurist at Downieville, and afterwards at Quincy, Plumas county. He was admitted to the Supreme Court of California in 1866, and has since practiced in the courts of California, in the courts of Ohio, and in the United States courts. He was admitted to the courts of Ohio in 1870, to the Circuit Court of the United States, ninth circuit, District of California in 1883, to the Circuit Court of Appeals for the ninth circuit, in 1891, and to the Supreme Court of the United States in 1893. From 1868 to 1870 he was district attorney of Plumas county. While practicing at Downieville and Quincy, he was engaged in numerous cases of importance, among which was one involving the validity of $230,000 of railroad bonds imposed by the legislature upon Plumas county, without its consent, from the burden of which the county was fully relieved as the result of litigation undertaken by the county. In 1870 Mr. Gear went back to Ohio. In 1883 he again returned and located permanently in San Francisco. He became the author of Gear's Analytical Index Digest of California Reports, and of Gear's Landlord and Tenant. In 1888 he became deputy reporter of the decisions of the Supreme Court of California, and has served in that position for the past twelve years. Since his return to California, Mr. Gear has been engaged in numerous cases of importance; and his legal abilities have been in demand as assistant counsel to leading attorneys of the State.

Mr. Gear has always been a man of pure, moral life, furnishing a splendid example to others.

D. R. GALE.

D. R. Gale was born near Arrow Rock, Cooper county, Missouri, January 17, 1855. At the age of two years his parents moved to northeastern Missouri, and settled near Memphis, Scotland county. Here he grew up, spending his time in working on the farm and occasionally attending the district school. His opportunities for acquiring an education were few, as the services of himself and of his older brother, John P., were required upon the farm as soon as the boys were able to work. In the face of these difficulties, however, he found time to read books which were of practical advantage to him afterwards. Among these books (the most of them borrowed from acquaintances) were "Hume's History of England," "Struggles and Triumphs of P. T. Barnum," "Life of Washington," "Paley's Natural Theology," and "Sargent's Life of Henry Clay." These books were read again and again with deep interest.

The struggles of Clay and the stories of the early life of J. Proctor Knott of Kentucky, as told by Riley Gale (father of the subject of this sketch), who was an intimate friend of "Proc," did much to shape the course of life and to arouse the ambition of this youth.

In May, 1875, he left his old home in Missouri, and came to California, determined to obtain an education. Arriving at Petaluma with a few dollars of borrowed money, a small valise of clothing, and a few books, he soon found employment on a farm near Peta-

D. R. Gale

ma. For a year and a half he worked near etaluma at whatever employment he could d, sending a portion of his earnings home help the family along. In January, 1877, entered Christian College at Santa Rosa, d pursued chiefly a literary and classical rse, spending his vacations at work in the rvest fields. In the spring of 1879 he be- n teaching school near Petaluma, and con- ued in this profession till the spring of 4, studying law in the meantime, during sure hours.

In the fall of 1883 he was, upon examina- n, admitted to the Supreme Court of Cali- rnia. Being desirous of prosecuting more roughly and systematically the study of v, he entered Columbian University, at shington, D. C., from which he graduated th the degree of Bachelor of Laws.

Finding that the remainder of his means s sufficient to enable him to take an ad- nced course, he then entered Yale College, w Haven, Connecticut, from which he duated in June, 1886, with the degree of ster of Laws, and was awarded the prize books, by that institution, for the best es- on the subject, "The Requisites of a Good w School Text Book." The fall of 1886 nd him back at Petaluma, but penniless. iling in his efforts to secure a place in a office in Petaluma, he went to Santa a to secure a place in a law office there; efforts in this direction seemed almost to when William E. McConnell, Esq., of Santa Rosa bar, after listening attentively the penniless lawyer, at once gave him a e in his office, and told him to hang out sign. For several months it was with the atest difficulty that he earned sufficient to ay the expenses of the simplest and nest lodgings and board—clothing and d were needed, but the young attorney re- ed at the start to stand upon the princi- "Pay as you go." "It is a long lane that no turning." Gradually the lawyer's ac- intance extended, and his practice in- ased. About this time he was materially ed by becoming assistant district attorney er District Attorney George Pearce.

n June, 1887, Mr. Gale formed a law co- nership with Albert C. Burnett (now Su- ior Judge of Sonoma county). The firm favored with an extensive practice, par- larly in the criminal line. In December, 8, the law firm of Gale & Burnett was dis- ed, Mr. Burnett having been elected dis- attorney of Sonoma county. Since that Mr. Gale has been alone in the practice aw. Gradually he drifted out of the crim- law practice into a thriving civil law prac- , which embraces a clientage of many of most wealthy citizens of Sonoma county. n the 3rd day of October, 1888, Mr. Gale married to Miss Carrie England of Santa a. They have one child, Thorne P., aged years.

H. C. GOODING.

his gentleman, a former Chief Justice of Supreme Court of Arizona Territory, was born in Greenfield, Indiana, June 14, 1838. His early education was received at the schools of that town. At the age of sixteen he entered what is now De Pauw University, and was graduated therefrom with the class of 1859. Soon afterwards he became principal of an academy in Macon, Tennessee. Before the close of 1860 he went to Carlinsville, Illinois, and began the study of law there, in the office of John M. Palmer, who became a major-general in the war that soon afterwards opened, and later United States senator. In 1861, when the war broke out, he was principal of an academy in Brighton, Illinois. He enlisted in the army, becoming a lieutenant in Company D, One Hundred and Twenty-second Illinois Infantry, and served through the war. He was acting Judge Advocate of the district of Western Kentucky a portion of the time.

When the war closed, and he was mustered out, he opened a law office in Washington, D. C., and engaged in practice before the Supreme Court of the District of Columbia.

In 1868 he removed to Evansville, Indiana, and opened the longest chapter in his career. He lived at Evansville, engaged in profitable law practice, for a period of twenty-two years. He was state senator for that district, serving at four sessions of the legislature. He gave up his residence and business to accept from President Harrison, in 1890, the place of Chief Justice of the Supreme Court of Arizona Territory. Upon the change of administration, in 1893, he resigned the position, and, after returning for a time to Indiana, removed to Los Angeles, California, where he has always since followed the profession of law.

S. F. GEIL.

Samuel Franklin Geil was born in New Britain, Bucks county, Pennsylvania, on the 28th day of September, 1841. There he passed his earlier youth and received the advantages of a good academic education. In 1859 he went to Cleveland, Ohio, where he entered the law office of Herrick & Barlow as a student, and at the same time took the usual course in the Ohio State and Union Law college. He graduated from this institution on the 26th day of May, 1862, and on the 26th day of September of the same year, he was admitted to practice in the Supreme Court of Ohio. Previously, however, at the breaking out of the Civil War, in 1861, he was among the first to enter the volunteer service and was appointed nrst lieutenant in the Second regiment of Ohio cavalry. He did not remain long in the service, and on the 11th day of December of the same year, his resignation was tendered to and accepted by General Buell, to whose department his regiment had been assigned, and he received an honorable discharge.

In 1862 he left Cleveland and went to California, coming by the Nicaragua route. Arriving in San Francisco and finding it to be somewhat of a barren field for a young lawyer and a stranger, he went to Monterey early in 1863. In the fall of the same year he was nominated on the Democratic ticket

and elected by a large majority as district attorney of Monterey county, the duties of which office he very ably discharged.

He remained in Monterey until January, 1873, when he settled at Salinas City, to which place the county seat had been removed. He there opened a law office and was in the same month and year appointed by the board of supervisors to the office of district attorney to fill a vacancy. He filled the unexpired term, securing the conviction of many noted murderers and robbers.

At the expiration of his term of office Mr. Geil formed a partnership with Hon. P. K. Woodside, ex-clerk of the Supreme Court of the State of California. This business arrangement, however, was of but short duration, and from 1875 to 1880, he practiced alone at Salinas City. In 1880 he formed a partnership with Hon. H. V. Morehouse. This association was continued for nine years,

until Mr. Morehouse moved to San Jose, in 1890, since which time he has practiced alone. During the twenty-seven years that he has been settled at Salinas City he has built up one of of the largest practices of any lawyer in the interior of the State. While he has a large and lucrative civil business, he is also widely known as a criminal lawyer. During his professional career he has defended no less than thirty-six persons charged with murder, only five of whom have been convicted and those of lesser grades; and he has secured the acquittal of over one hundred and fifty persons charged with felonies of less gravity.

He is a married man and his family consists of his wife and two daughters. He has for many years been a member of the Masonic fraternity, having served for three years as high priest of Salinas Chapter No. 59, R. A. M. He is now a Knight Templar and Noble of the Mystic Shrine; and is also a prominent member of the Order of Odd Fellows.

BENJAMIN GOODRICH.

Mr. Goodrich was born in the Republic of Texas, in 1839. His father was Dr. Benjamin Briggs Goodrich, who was one of the signers of the Declaration of Texan Independence. Dr. Goodrich was also a member of the constitutional convention which framed the constitution of that republic, and a member of congress of Texas as long as the republic existed. John C. Goodrich, an uncle of our subject, was killed at the Alamo, in San Antonio, Texas.

Mr. Goodrich went into the Confederate Army in the fall of 1861, and fought through the Civil War. When the war was over he studied law, and was admitted to the bar. He practiced in Texas from 1866 to 1880. He then removed to Arizona, and practiced there until 1890. In the latter year he came to California, and took up his residence at San Diego. He remained there some two years, being associated in practice with William J. Hunsaker, now of Los Angeles, and with E. W. Britt, afterwards Supreme Court Commissioner. He settled permanently at Los Angeles in 1892. At that place, January 1, 1807, he formed a partnership with Mr. A. B. McCutchen.

Mr. Goodrich has always had a good practice in Los Angeles, and is held in general esteem. Judge Silent, who made his acquaintance in Arizona, when the Judge was on the Federal bench there, cherishes a high regard for him, as also do ex-Superior Judge W. F. Fitzgerald, and other lawyers of first rank.

PHILIP G. GALPIN.

Mr. Galpin was born in Buffalo, New York, February 3, 1830. At the age of five years he was adopted by and took the name of his uncle, Hon. Philip S. Galpin, of New Haven, Connecticut, then wealthy, childless, a prominent leader of the Whig party in that state, state senator from New Haven several times, and for several consecutive years mayor of that city. Twice tendered a nomination for congress when his party was in power, he refused on the ground that he did not wish to exchange his comfortable home for the inconveniences of a Washington hotel.

Interested in the development and training of his adopted son he gave him a thorough classical education at Russell's Military Academy, and after that, in Yale College and law school. At the age of five years Philip changed his name, on his own motion, from Philip Galpin Gleason to Philip Gleason Galpin; and from that time on resided with his uncle and was brought up by him as his son. His own father's name was Thomas Gleason, born in Vermont in the latter end of the preceding century, where his ancestors had settled before the War of the Revolution. His mother's family name was Fitch, of New Haven, whose ancestor, Thomas Fitch, was the last governor of the Colony of Connecticut, commissioned by the king of England. Al-

Philip G. Galpin

though born in America. He resigned his commission at the breaking out of the Revolutionary War, and presided at the first meeting held at Norwalk to raise troops for the patriot army. He was a lawyer by profession, as also his son, and grandson.

Mr. Galpin graduated from Yale in the class of 1849, entered Yale law school, studied in the office of Charles R. Ingersoll and that of Henry B. Harrison, afterwards Governor of Connecticut, and was admitted to practice in the Supreme Court of that state in 1852. He removed to Ohio and began practice at Findley. Two years after, on a visit to New York, he was offered a partnership by Robert G. Pike, which he accepted, and remained in practice for some years in the firm of Pike & Galpin in Wall street. He came to California on business of that firm in 1857, and remained here for two years to argue a case on behalf of the heirs of Franklin C. Gray, on appeal to the Supreme Court, known as Gray vs. Palmer, in the Ninth of California. Winning this, he returned to his partner in New York. He again temporarily returned here in 1861, and tried several actions in ejectment, growing out of his successful appeal of Gray vs. Palmer. Defeated in these cases in the Circuit Court in California, he took a test case to the Supreme Court of the United States, and there argued Brignardello vs. Gray, reported in the first of Wallace. Decision for appellant. The contestants still holding out, he brought the suit of Galpin vs. Page, and being again defeated in the Circuit Court by the principle announced in the Supreme Court of this State in Hahn vs. Kelly, 34 Cal., on another writ of error to the Supreme Court at Washington, he there overthrew the doctrine of that case and won for the Grays a large amount of real estate in San Francisco.

In 1865 Mr. Galpin again reappeared temporarily in California, being still engaged in practice in New York, and brought several suits for the heirs of John Hall of Philadelphia, who claimed large tracts of San Francisco. It appeared on the trial that John Hall, a lieutenant in the United States navy had gone insane while stationed in San Francisco, was sent home by the government in charge of an officer, and the insanity becoming permanent, was confined in a lunatic asylum near Philadelphia. The Records of San Francisco showed that one John Hall had purchased from the early alcaldes numerous fifty-vara lots, and designing persons ascertaining this fact, traced him to the asylum, and finally succeeded in obtaining from him a power of attorney, which was duly acknowledged in the asylum before a notary. Under this power the lands in controversy were sold. The trial court found for the plaintiff, and on a writ of error to the Supreme Court of the United States that court, in Dexter vs. Hall, 15 Wallace, affirmed the judgment. The court ordered two arguments, Roscoe Conkling appearing for the writ. The question presented was whether the power of attorney of a lunatic was void or was voidable only as stated by Blackstone. The decisions have been both ways, but the Supreme Court held, on the second argument, that the power was absolutely void, and the eastern heirs recovered their land.

Mr. Galpin reappeared some years later in the Supreme Court at Washington in the well-known Montgomery Avenue tax case on behalf of the property holders, and there that court affirmed the doctrine of the case of Mulligan vs. Smith, decided in his favor by the Supreme Court of this State some years before.

In 1868 Mr. Galpin traveled in Europe, and then resumed practice in Wall street. In the year 1875 he came to California to remain, having on previous occasions continued his residence and business in New York. Since 1875 he has tried numerous cases, some of which will be found in almost every volume of the Supreme Court Reports of this State. After a residence here of one year, his first partnership was formed with John B. Harmon (of whom a sketch appears in this volume). This lasted until 1881, when the strong, leading combination was begun by John T. Doyle, William Barber, Mr. Galpin and H. D. Scripture, under the style of Doyle, Barber, Galpin & Scripture. Mr. Barber withdrew in 1885, Mr. Scripture withdrew and retired from practice in 1889, and Mr. Doyle did the same a year later. Since January, 1899, Mr. Galpin has been associated with his present partner, Mr. A. E. Bolton. He holds place in the first class of successful lawyers. His professional career, which is lengthening to an uncommon span, has been attended with no adversity.

He has been twice married. His first wife died in 1883. In 1885 he married Miss Julia B. Castro, daughter of Victor Castro.

In politics he has always been a Democrat, but never a candidate for office. He has taken an active part in recent efforts to procure a better government for San Francisco, having been for several years chairman of the judiciary committee of the Non-Partisans.

The Galpin residence occupies a fine site at the northeast corner of Broadway and Gough streets, where the family have lived for several years.

ALFRED C. GOLDNER.

Alfred Charles Goldner was born in Placerville, El Dorado county, California, November 1, 1860, of German parents, his father being a miner and merchant, and a man of good education. He studied at the public schools and Conklin's Academy in his native town, where, on the 14th day of February, 1879, he entered the law office of Hon. George G. Blanchard, under whose supervision he pursued his legal studies until July 26, 1881. Then, at Judge Blanchard's suggestion, and with his assistance, he removed to San Francisco, in which city he continued his preparations for the bar in the office of Hon. Paul Neumann and Henry Eickhoff, at the same time attending all the lectures at Hastings' College

of the Law. He was admitted to the bar by the State Supreme Court, at San Francisco, on August 9, 1882, and on the 14th opened an office in Placerville. In May, 1884, he located in San Francisco, and has ever since practiced law there. He is also a notary public and conveyancer. Being of a literary turn, Mr. Goldner has for years devoted his leisure moments to story writing, and occasionally contributes special articles to the press.

P. F. GOSBEY.

P. F. Gosbey was born in the town of Santa Clara, county of Santa Clara, State of California, on May 15, 1859. He attended the public schools of his native place and graduated from the high school in 1875. In the fall of the same year he entered the University of the Pacific, completed the classical course and graduated with the degree of A. B. in 1880. The summer and fall of this year were spent in the harvest field to enable him to raise funds to cancel some of the debts incurred to meet the expenses of his last year in college. In the spring of 1881 Mr. Gosbey took the county examinations of the board of education of Santa Clara county and succeeded in getting a teacher's certificate. In the summer of '81 Mr. Gosbey was chosen to teach a small school in Mount Pleasant district in Santa Clara county. In June, 1882, he was elected principal of the public school at Alviso. In October of the

same year he was elected by the board of education of the city of San Jose to the chair of mathematics in the San Jose high school. This position he held until June, 1886, when he resigned, being at the time vice-principal of the high school. Taking with him the savings of his work as school teacher, he entered the law department of the University of Michigan at Ann Arbor in 1886, and graduated therefrom in 1888 with the degree of LL. B. Mr. Gosbey was elected by his class as its historian. In the fall of this year he was admitted to practice law in this State by the Supreme Court. He returned to San Jose and began his work as a lawyer, and is still located there. Mr. Gosbey has been prominent in the Masonic Order, and the Independent Order of Odd Fellows, having been grand master of the State of the latter organization. He is a member of the legal fraternity of Phi Delta Phi.

WALKER C. GRAVES.

Walker Coleman Graves was born in Fayette county, Kentucky, on the 10th of June, 1849. He is the son of Coleman and Virginia

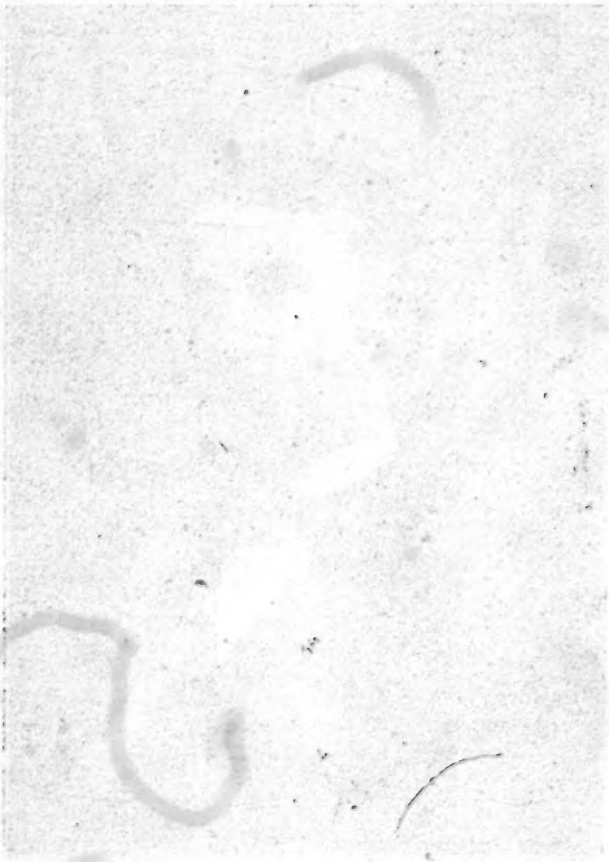
Graves. His father was a successful farmer and a man of some learning and culture, and he gave his son the opportunities of a good education.

Mr. Graves attended the University of Kentucky, taking the entire course, graduating in Latin, Greek, French and German; and but for his failure to stand the required examination in conic sections (which was due to his sickness) he would have received the degree of master of arts. He took the degree of master of commerce and is a graduate of the law department of the university named. He was admitted to practice in all the courts of Kentucky and entered the law office of James B. Beck, afterwards United States senator, at Lexington.

Mr. Graves came to California in 1878, and located at San Francisco. He has since been engaged in the practice of his profession.

In 1882 he was married to Maude, only child of Jefferson G. James, a California pioneer, and is the father of three boys, whose names are, Jefferson James, Walker Coleman, and Rector Chiles.

In 1888 he was appointed special assistant district attorney, and as such, he had charge of many important cases involving jury bribery, embezzlement of public funds, violation of election laws, etc. In nearly all of these he secured convictions. In many instances the defendants were men of wealth and of strong social and political influence, and they were



Will D. Gould

defended by the ablest criminal lawyers in the State. Of the numerous appeals in cases tried by him, he was successful in all except one, and the reversal in that case was secured on purely jurisdictional grounds.

In 1890 Mr. Graves was nominated for the office of attorney-general by the Democratic party but went down in the general cataclysm that overtook his party in that year.

Since leaving the district attorney's office Mr. Graves has confined himself almost entirely to civil cases. He has been connected with some of the most important land and water suits in the State.

He is past worshipful master of Pacific Lodge, No. 136, of Free and Accepted Masons, and is past grand chancellor of the order of Knights of Pythias. He is present supreme representative of the last named order, and has served a term in the grand tribunal.

WILL D. GOULD.

Will Daniel Gould was born September 17, 1845, in Cabot, Vermont. He attended the common and high schools of his native town, the academy at St. Johnsbury and Barre, and was elected and served as superintendent of schools in Cabot the year he attained his majority. He was principal of the graded schools at Marshfield, Passumpsic and Plainfield. In 1871 he was graduated from the University of Michigan, and was immediately admitted to the bar at Montpelier, Vermont. The following year he removed to Los Angeles, California, where he has since been successfully engaged in the active practice of his profession.

J. A. GRAVES.

J. A. Graves was born in the state of Iowa, December 5, 1852, his parents being natives of Kentucky. He came to California in 1857, when barely five years of age. He lived his early life on a ranch near Marysville, in Yuba county, and later in San Mateo county, and attended the San Francisco High School. He then went to St. Mary's College, San Francisco, and graduated there as an A. M. in 1873.

He then began the study of law in the office of Eastman & Neumann, in San Francisco. He removed to Los Angeles in 1875, entering the office of Brunson & Eastman as a clerk and student. In January, 1876, he was admitted to practice by the Supreme Court of the State, and immediately became a partner of his late employers, the firm being Brunson, Eastman & Graves. It enjoyed a very large share of the practice of Los Angeles city and vicinity during its existence. The firm was dissolved in 1878, and Mr. Graves was alone until January, 1880, when he formed a partnership with J. S. Chapman, as Graves & Chapman. This firm immediately took high rank at the Los Angeles bar. On January 1, 1885, Judge Chapman was joined by his brother-in-law, Judge Hendrick, of Lassen county, and Graves & Chapman dissolved.

Mr. Graves then took Mr. H. W. O'Melveny into partnership, under the name of Graves & O'Melveny. The latter gentleman is a son of the Hon. H. K. S. O'Melveny, now deceased. He is a graduate of the State University, and at that time was a deputy district attorney of Los Angeles county under Stephen M. White. In 1888 Mr. J. H. Shankland, for ten years prior thereto the attorney for the San Francisco Board of Trade, became a member of the firm.

Graves, O'Melveny & Shankland have been extremely successful. They enjoy the full confidence of the community and represent a large number of local banks and many of the wealthy and important corporations of Southern California, besides having a large personal clientage.

Besides attending to his law practice, Mr. Graves is a successful orange grower, and is extensively interested in the oil industry. He and Mr. O'Melveny have been associated together for sixteen years—longer than any other two members of the Los Angeles bar. Mr. Graves has had his office in the Baker Block since December 1, 1878.

GILES H. GRAY.

Giles H. Gray, whose appearance would indicate that he was still on the sunny side of life, and whom nobody looks upon as an old man, has been at the San Francisco bar for nearly fifty years. He was practicing alone in the middle fifties, then was in partnership for a few years with C. V. Gillespie. In 1864-65 he was associated with E. B. Mastick (Mastick & Gray). For twenty years (1870-1890) he was in partnership with James M. Haven (Gray & Haven). When this firm was dissolved the two gentlemen continued to occupy adjoining offices, and are at least socially together today, with elegant rooms in the Claus Spreckels Building.

Mr. Gray was a member of the San Francisco board of supervisors in 1863, of the board of education in 1864-65, and of the assembly at the session of 1871-72, when he was chairman of the committee on corporations. From 1873 to 1877 he was surveyor of the port of San Francisco, by appointment of President Grant. Mr. Gray removed his residence to Oakland in 1873. He is a man of large fortune. He registered as a voter on May 22, 1869, as being a native of New York, and then aged thirty-five years.

Nathaniel Gray, father of Giles H., was always closely identified with religious and philanthropic work. He was a zealous member of the San Francisco Bible Society, and of the First Presbyterian Church, from 1854 until his death, thirty-five years later. He was a member of the assembly at the session of the winter of 1863-64. Among his many acts of benevolence was a gift of $5,000 to the Pacific Theological Seminary. He was born in Massachusetts, July 20, 1808, and died at San Francisco, April 24, 1889, leaving a considerable estate. His wife, mother of Giles

H., died January 20, 1887. A sketch of her useful life may be found in the "Occident" of March 16, 1887.

R. S. GRAY.

Roscoe S. Gray was born on the 7th day of April, 1857, in Mount Carroll, Carroll county, Illinois. His great-grandfather, John Gray, of Connecticut, was a member of the committee of public safety for King's district, in the State of New York, in the early part of May, 1777, and otherwise rendered material service in aid of the American struggle for independence. Mr. Gray was admitted to the Supreme Court of California on the 5th day of August, 1890; by the Circuit Court of the United States for the ninth judicial circuit in and for the northern district of California, on the 17th day of March, 1893; and on the same date, by the District Court of the United States for the northern district of California; and by the United States Circuit Court of Appeals for the ninth circuit on the 3d day of April, 1893. He has been in partnership with Hon. Charles N. Fox, ex-Justice of the Supreme Court, since 1892. This firm has always had a large general practice.

E. S. HALL.

Mr. Hall was born in Virginia, in 1854. His early education was received from private tuition, before the public school system was established in that state. Removing to Iowa in boyhood, he attended the public schools, the Normal School, and Lincoln Academy. He taught school in Iowa until he came to California, which was in 1875. Locating at Santa Barbara, he studied law in the office of Judge E. B. Hall, who was his uncle.

In 1879 Mr. Hall was admitted to the bar, and soon afterwards removed to Ventura, and began the practice. In 1881 he was united in marriage with Miss Robertine B. Hines, daughter of Hon. J. D. Hines, then Superior Julge of Ventura county. He was elected district attorney in 1882, and served one term, but declined to run again for any office.

In 1886, on account of ill health, Mr. Hall gave up the active practice of the profession, taking up real estate and insurance business, as affording him more active out-door exercise. He is now engaged again in the practice of law, particularly as it is related to real estate, the examination of titles, etc. He is a member of, and attorney for, the Ventura Title and Abstract Company.

FREDERIC W. HALL.

Frederick Winslow Hall comes of old New England stock, and was born in Gorham, Maine, March 20, 1860. He fitted for college at Gorham Academy and Kent's Hill, and entered Bowdoin College in 1876, where he graduated in 1880, with first honors. Immediately after graduating, he came to California, studied law with Hon. J. F. Wendell, at Fairfield, Solano County, and later with Hon. Samuel G. Hilborn, at Vallejo, and was admitted to the bar in 1882. He at once commenced the practice of law at Vallejo, and soon built up a lucrative and substantial business. In 1887 he removed to San Francisco, where he formed a partnership with his uncle, the Hon. Samuel G. Hilborn, since deceased, under the firm name of Hilborn and Hall. This partnership continued until 1895, when Mr. Hilborn retired to devote his entire time to his duties as a Member of Congress, since which time Mr. Hall has been practicing alone.

Mr. Hall is a well-read, careful, clear-headed and hard-working attorney. His regular clientage is large and valuable. He has handled many important cases, and has met with eminent success in the Supreme Court of this State and of the United States. He is a good business man, and acts as business and legal adviser for several large estates. His choice of the legal profession was clearly no mistake. Like most successful attorneys, he has made something of a specialty of corporation law, and numbers among his clients many wealthy corporations. Honorable in his dealings, true to his word, and sound in his advice, he retains the confidence of all who have dealings with him.

Mr. Hall married, in 1889, Miss Maud E. Noyes, daughter of Mr. Crosby S. Noyes, editor of the Washington (D. C.) *Star*, and has two children.

CHAS. F. HANLON.

Colonel Chas. F. Hanlon began his career at the bar when twenty-one years of age, in San Francisco, where for many years now his name has been one of the most familiar to the profession and the public. He was born in New

York city January 19, 1856. He was educated at colleges in San Francisco and read law with John M. Burnett, becoming a member of the bar of the State Supreme and Federal Courts at San Francisco in 1877. He conducted business involving a fortune before the Supreme

W. H. H. Hart

Court of the United States at Washington, where he was admitted in 1885. Twelve times he has crossed the continent on business before the courts of New York, Pennsylvania, Massachusetts and District of Columbia. The Donahue railroad in New York, the Eben D. Jordan's millions in Boston, and other large interests were protected by litigations won by him in the East. A man of great ambition and extraordinary energy as well as capacity for legal business, he easily secured a large following. For a decade or more, he has been one of the most conspicuous and prosperous lawyers of the State. He had the adjustment and management of the railroad interests and estate of the late Colonel James Mervyn Donahue, whose father, Colonel Peter Donahue, had also intrusted to him a large volume of legal business. By the unfortunate ventures and speculations of James Mervyn Donahue, his estate, when he died, was so crippled that creditors and legatees offered their claims for ten cents on the dollar. In five years' work, involving the winning or settling on his terms of ninety cases in litigation, Colonel Hanlon turned over one and three-quarters millions to the estate; thus giving a fortune to the heirs after paying every creditor and legatee dollar for dollar. The court fixed his fee at ninety thousand dollars. He was chief general, counsel and a director of the San Francisco & North Pacific (Donahue) Railroad Company for many years. The volumes of the California reports show the heavy litigations won by him for that company. He was the attorney for the million dollar estate of Annie A. Pratt, whose will he broke in Los Angeles, after a five months' jury trial, the longest ever had in Southern California. He was the attorney in the million dollar estate of the wealthy pioneer jurist of Oregon and California, O. C. Pratt. His fees in these estates are estimated at over $125,000. In an interesting case, tried about 1890, as we remember, on an appeal which he took to the Supreme Court for the *Daily Examiner*, whose attorney he was, that tribunal in seven separate opinions by the seven Justices sustained his contention that newspaper reporters, in trials in which the newspaper is not a party are not compelled to divulge facts and statements made to them in confidence. There is no space, however, to even glance at the many interesting and important cases which he has carried to a successful issue. The latest to challenge special notice from the bar and the people is the case of Lucy Hite, the Indian woman. Colonel Hanlon, as her attorney, along with Van R. Paterson, who called him in at the trial, made a fight which attracted attention in the newspapers in the East as well as in the West. John R. Hite, after twenty-six years of recognized married life with Lucy Hite, taking from her the Indian mine which bore him five millions in gold, put her aside and married a white woman. Lucy sued for divorce, but Hite denied her as a wife, and engaged an array of lawyers and a horde of detectives, and the contest between the attorneys at the trial almost resulted in bloodshed, but the court vindicated Lucy as the wife, giving her her full right in Hite's millions.

Colonel Hanlon is one of those lawyers who, although pressed with professional cares, yet finds time to give attention to matters of public concern. He has for many years been a director of the Crocker "Old People's Home," and vice-president thereof. He is one of the most sedulous guardians of the welfare of that excellent institution. He delivered the address at the laying of its corner-stone. Subsequently, Colonel Fred Crocker in a public address delivered him the keys.

He was the orator of the day at various celebrations in San Francisco. He was for three years in the ranks of the California National Guard, was then promoted to Major and afterwards to Colonel on General Dimond's staff. He was for four years on the staff of Governor Stoneman, and was afterwards on the staff of Governor Bartlett.

The Colonel is a Democrat; has been president of various clubs; has been a prominent member of nearly every State convention of his party since 1880, and also of the State central committee. He is stanchly anti-boss, and his influence is always thrown in favor of pure politics and honest government. He is a man of clear thought, a strong, logical speaker, a tireless worker and student, and a man of clean life.

W. H. H. HART.

W. H. H. Hart, who was leading counsel for the successful claimant to the great estate of Thomas H. Blythe, and attorney-general of California for the period, January, 1891, to January, 1895, was born in Yorkshire, England, January 25, 1848. The eye would hardly turn thither in expectation of finding a child named after a President of the United States (William Henry Harrison). But, keeping him in view, we shall see him in the ranks of the American army as a boy soldier, in the great conflict of the Civil War.

Mr. Hart's father brought his family to this country in May, 1852, and settled in Illinois. In April, 1856, the son, a child of eight years, was stolen by Indians. He was recovered in the following October. The family removed to Iowa in the spring of 1857, where the wife and mother died a year later, the father following her in April, 1859. The boy supported himself by herding sheep. He attended school for two winters with a young man fifteen years his elder, named Hinckley. When the war broke out, the boy was thirteen years old. Even at that age, he was expert in the use of fire-arms. He went to Cairo, Illinois, to enlist. It was the winter of 1861-62, and Grant was stationed there. His friend Hinckley was now there also, and was in the confidence of the great general, for important services rendered. He commanded a company of private scouts. Young Hart joined this company in January, 1862. He took part, with his company, in the Grant campaigns of Donelson, Shiloh, Vicksburg and Chattanooga. At the battle of Missionary Ridge he was in command of Hinckley's company, and while the bearer of an important

dispatch from Grant to Sherman, across a country held by Confederate forces, he was three times wounded in crossing this territory from Citico Creek to Sherman's right, a distance of about two and a half miles.

The young scout recovered from his wounds, and returned home in March, 1864. He began study at the public school, but in May enlisted in the Forty-fourth Iowa, as a private. He was mustered out of the service in September following, and in that fall acted as a scout for General Thomas at and around Nashville, took part in the famous battle of that name, in December, 1864, and, in February, 1865, enlisted in the One Hundred and Forty-seventh Illinois. He was wounded again in April, 1865, at Pulman's Ferry. He was finally mustered out in February, 1866.

The young man's attention was turned to the law as a profession in the summer of 1865, when he was seventeen, and while he was doing provost duty at Dawson, Terrell county, Georgia—where a Judge on the bench had presented him with a copy of Blackstone and advised him to read it, which he continued until he was mustered out. After this, for two years, he devoted himself to law, reading at night while attending the public schools in the day. He was admitted to practice in the County Courts of Iowa, September, 1868, and four months before he was of age, in the District Court in Iowa, in September, 1869, and to the Supreme Court of that state in April, 1870. He was elected city attorney of DeWitt, Iowa. He acquired reputation as a criminal lawyer, although he has never followed that department of the practice in California.

Mr. Hart came to this State in 1873, and began law practice in San Francisco. He soon became prominent in both law and politics. In 1886 he was the Republican candidate for attorney-general, receiving 7400 votes more than his candidate for Governor, but was defeated, with nearly all of his ticket. In 1890 he was again the nominee of his party for attorney-general, and was elected. He made a very industrious and able attorney-general. Since he left that office he has not been in public life, but has been occupied with a large private law practice. Among the valuable estates in which he has been employed as attorney since the settlement of that of Thomas H. Blythe, may be mentioned the estate of L. P. Drexler. Mr. Drexler, an old resident of San Francisco, died in 1899, leaving property of the appraised value of nearly two millions.

Thomas H. Blythe was the assumed name of Thomas H. Williams, an obscure Englishman, who arrived in San Francisco on August 4, 1849, on the ship Antelope, Captain Aysh-ford, from Liverpool. His name appeared only thrice in the city directories down to 1874, and then he did not disclose his business. In 1874-75-76 he gave his occupation as that of a real estate dealer. Then every year for seven years, until his death, he held forth as a "capitalist," with his name in large type. He was a bachelor and a Mason, and a very rich man.

He acquired the city building lots which made him a millionaire—in the Gore block, bounded by Market and Geary streets and Grant avenue, by two deeds from James Findla, another pioneer, who made a large fortune as a dealer in coal.*

The deeds (we have examined them on the public records) were both quit claims, the first, of December 16, 1850, conveying lots 36, 37, 38, 39, 899 and part of 900, for the sum of $810; the other, of January 17, 1851, conveying the southeast corner of Grant avenue and Geary street, 275 feet on the avenue, and 125 on the street, for $1400.

Blythe was never known outside of a narrow circle, and led a quiet life in San Francisco for thirty-four years. His legal adviser was Henry H. Haight (who came to be Governor of the State, 1868-71), until the latter's death, when he took counsel in his business affairs, among others of General W. H. H. Hart.

Blythe died suddenly at San Francisco, on April 4, 1883.

"It is probable," said an editor, "that had Blythe lived ten years longer he would have been bankrupt. He had bought a large estate in Mexico, and his plan was to return to Mexico as the lord of a vast estate. It was the English idea. Blythe would figure in the New World as he could not in the old. He would have large numbers of dependents, and would in time match his new possessions, for their extent, against those of the richest landlord in Great Britain. Blythe's vision of territorial magnificence, of hundreds of retainers, of a vast estate, over which he would exercise something akin to feudal authority, was extinguished by his death. The millionaire lay down one day in his rooms, gasped a few times, and was gone."

No will was ever found. His attorney, General Hart, had, at his request, made a rough draft of a will, in which, among other legacies, was one of $10,000 to the General. This paper was not discovered afterwards. Blythe was buried with the rites of the Masonic order. General Hart had learned from Blythe of the existence in England of a child, and he arranged to bring Florence Blythe to San Francisco to take her place upon the stage of a long drama. Florence was born in December, 1873, and was not ten years old. The San Francisco estate left by Blythe comprised entirely of the land before specified, and improvements, was worth not less than $2,000,000. It largely increased in value before final distribution.

The right of the child to the estate was contested by a large number of claimants, coming from all parts of the world. The great controversy fell to Judge Coffey's department of the Superior Court. Several years were passed in the examination of the various pretensions, and in due time Florence, by

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* See the strange case of Findla vs. San Francisco (13 Cal. 534), and Middleton vs. Findla (25 Cal. 76).

guardian, with General W. H. H. Hart as attorney, associated with McAllister & Bergin, brought an action before Judge Coffey, under section 1664 of the Code of Civil Procedure, to determine the heirship and title to the estate, which section provides that in all estates now being administered, or that may hereafter be administered, any person claiming to be heir to the deceased, or entitled to distribution in whole or in any part of such estate, may at any time after the expiration of one year from the issuing of letters testamentary or of administration upon such estate, file a petition in the matter of such estate, praying the court to ascertain and declare the rights of all persons to said estate and all interests therein and to whom distribution thereof should be made. All the other claimants made answer, traversing the pretensions of plaintiff to be the child and heir of deceased, and alleging that she was the offspring of one Joseph James Ashcroft and his wife, Julia Ashcroft, nee Perry, and by way of cross-complaint, averring respectively their own claims to heirship, ownership or interest in the estate.

The trial of the issues thus joined between the parties litigant began on the 15th of July, 1889, before the court, without a jury, an express waiver of a jury having been made in open court.

The trial of this action before Judge Coffey occupied a full year, beginning on the 15th of July, 1889. There were 208 witnesses examined, and depositons read of 139 other persons. The argument of the case was opened on the 10th of April, 1890, and the counsel who participated were: For the plaintiff, the child Florence, W. H. H. Hart, W. W. Foote, and John H. Boalt; for the Williams heirs of Liverpool, E. R. Taylor, W. S. Goodfellow; for James DeWitt Pearce, Ramon E. Wilson; for the Blythe Company, H. P. McKoon and G. W. Towle; for the Gipsey Blythes, E. Burke Holladay and S. W. Holladay; for the London Savages, L. E. Bulkeley; for William and David Savage, M. Waldheimer and T. J. Lyons; for Alice Edith, the alleged widow, E. D. Wheeler and Henry E. Highton. Selden S. and George T. Wright submitted the claim of the Scotch-Irish Savages without argument.

Judge Coffey decided the case in favor of Florence on the 31st of July, 1890. (In this connection, the reader is referred to the sketch of Hon. James V. Coffey.) Some thirty appeals followed to the State Supreme Court, four of which went to the Supreme Court of the United States. For another long period General Hart's resources of mind, as well as his physical stamina, were severely taxed, as he was compelled, as the principal counsel for the plaintiff, to give his unremitting attention to all of these appeals. He argued them in the State Supreme Court, and at Washington.

His reward came when the State Supreme Court affirmed Judge Coffey's decision on November 30, 1892. There were further delays, but the public administrator, who had charge of the estate from the beginning, finally placed Florence in possession on the 4th of December, 1895. In that month the girl of ten summers in 1883, had become twenty-one years of age, and was the wife of Frederic W. Hinckley, a worthy young man, a native of San Francisco, the son of Daniel B. Hinckley of the Fulton Iron Works.

When Mrs. Hinckley, with her tried and trusty counsel by her side, was placed in possession of the block of land in the very center of the great city, the property was worth at a conservative estimate, $2,500,000, and yielded a rental of $12,000 a month.

It was not until some years after this, however, that Mrs. Hinckley's title was finally settled. General Hart's last call to Washington in the case was in March and April, 1897. The matter then under consideration was a writ of error asked by the Gypsy or Kentucky Blythes. The attorneys for the latter made the point that Florence Blythe, having been born in England, and not having come into the United States before the death of her father, was an alien, and being an alien, she could not inherit the property in the State of California without there being a provision in the treaty between Great Britain and the United States permitting her to do so. In other words, Jefferson Chandler claimed that an alien can only inherit when a treaty expressly permits it, and that the states have no authority, by reason of their sovereignty, to pass any law allowing aliens to inherit unless permitted to do so by treaty. The United States Supreme Court sustained General Hart's contention and denied that of Mr. Chandler. (Blythe vs. Hinckley, 167 U. S. 746; Blythe Co. vs. Blythe, 172 U. S. 644; Blythe vs. Hinckley, 173 U. S. 501.) There is one case still pending in the United States Supreme Court.

Mrs. Florence Blythe-Hinckley arranged to settle all claims presented against her by attorneys and others who were instrumental in establishing her rights as sole heiress of the late Thomas H. Blythe by buying from them their part of the Blythe block and making cash payment, General Hart retaining one-eighth interest in the Mexican and lands outside of San Francisco, which makes his fee one of the largest, if not the largest, ever paid in this country.

The value of the whole block was estimated, in round figures, to be $2,500,000. Mrs. Hinckley retained $1,500,000 worth of property and $1,000,000 went to the people that fought for her cause. Under the private agreement existing between themselves, the attorneys and others that assisted her, received the following sums: W. W. Foote and Garber, Boalt & Bishop, $200,000; Thomas I. Bergin, $75,000; the estate of Mrs. Hall McAllister, $112,500; W. H. H. Hart, $325,000, and one-eighth of all property other than the Blythe block.

General Hart is largely interested in mining, and in the recent oil discoveries in Central California. He is well versed in metallurgy and has large experience in mining litigation,

and is devoting almost his entire time to mining and probate law, and is attorney for several corporations.

HORACE M. HASTINGS.

Horace M. Hastings, who was city and county attorney of San Francisco in 1867-68, was born in New York in 1836. He was graduated from Union College and the Albany Law School, and was admitted to the bar at Albany, New York, in December, 1860. He located in San Francisco in March, 1861. He removed from the State in the fall of 1871, and has since been assistant district attorney in New York City, and an assistant in the United States attorney-general's office at Washington, D. C. He was living in New Jersey as late as 1893.

A. G. HINCKLEY.

Adolphus G. Hinckley was born July 29, 1856, in Richfield, Adams county, Illinois. As a part of his business education, at the age of thirteen, he commenced paying his own expenses by service as a shorthand writer. He read law in the offices of Wheat, Ewing & Hamilton in Quincy, Illinois, Hon. Emory A.

Storrs of Chicago, Hon. John K. Cowan of Baltimore, and Hon. Henry C. Baldwin of Connecticut; and commenced practicing before justices at the age of eighteen. His work gave him intimate relations with some of the most eminent men of the country, the benefit of whose methods and example have been of inestimable value to him.

He was admitted to practice before the Supreme Court of Illinois, and followed his profession in Chicago and Topeka, Kansas, until he removed to Los Angeles, California, in April, 1883, where he has since resided and practiced law.

Mr. Hinckley is descended from the sturdy, self-reliant, independent type of men who have been leaders in the world's history. Among the nobles who wrested from King John the Magna Charta was Baron Hinckley, whose crest and coat of arms are still preserved in the family; later Samuel Hinckley left Kent, and landed on Plymouth Rock in 1635, when America was a wilderness of wild beasts and savages: and his son Thomas Hinckley was the last Governor of the Plymouth Colony before it was consolidated with the Massachusetts Colony; Elkana Hinckley fought in the Revolution, with his father, and his son Thomas Gage Hinckley was in the War of 1812, and in the War with Mexico; and his son, Jesse Clinton Hinckley, and another son, Record W. Hinckley, with the latter's three eldest sons, were in the Civil War as Union soliders.

Besides being represented in every war that this country has ever had, the ancestors of Mr. Hinckley have been among the pioneers who blazed the pathway of civilization in its march westward. His father, Record W. Hinckley, originated the policy of giving alternate sections to build railroads through the West to the vast territory acquired in the Mexican War, and finally, in 1849, by petition to congress, coupled with the gold excitement in California, his idea became the law of the land, and led to the rapid development of the great West.

Mr. Hinckley is clear, prompt and pleasant in his dealings, exact and honorable. His quickness of perception and fertility of resource afford him advantages in argument, and contribute to his success in negotiation. He has a warm, sympathetic nature, ever ready to help the unfortunate, and much of his most arduous labor has been for those whose only means of payment was gratitude.

Although Mr. Hinckley's business experience has covered so many years, the freshness of youth is still upon him. He is a genial companion, a true friend, and a man who can be depended upon in all things.

JAMES M. HAVEN.

James M. Haven, a prominent and successful lawyer of San Francisco, was born in New York, November 9, 1827. He was admitted to the bar at Downieville, Sierra county, California, in 1863, where he was deputy provost marshal and deputy collector of internal revenue, in 1862-64. He was superintendent of schools of Sierra county in 1864-65, and district attorney in 1866-67. He arrived in the State on March 26, 1850, and spent several years in mining before entering on law practice. He has been at the bar in San Francisco since 1868. For a long period he was associated with Hon. Giles H. Gray, but for many years now has been in partnership with his son, Thomas E. Haven. He is a safe adviser, a careful practitioner, a moral and religious man, being an active member of the Congregational Church, and is held in general regard. He has made his home in Oakland since 1876.

HORACE HAWES.

Horace Hawes, not the pioneer lawyer many times referred to in these pages, but the author of two books in the Pony Series, on Parties to Actions and Jurisdiction of Courts, pub-

Will A. Harris

lished, respectively, in 1884 and 1886, was born in Wrentham, Massachusetts, completed his literary course in the Boston University, and graduating from the law school of that university, was admitted to the bar by the Supreme Court of Massachusetts.

He came to California in 1871, and was engaged for a year in commercial business at Santa Cruz. Then returning to Boston, he entered upon professional work in the office of the law firm of Russell & Suter.

In 1875 he came back to California, and was in practice in San Francisco, associated in business for five years with ex-Congressman P. D. Wigginton. He then removed to Fresno, and is still in large practice there.

WILL A. HARRIS.

This gentleman, who enjoys great popularity in Southern California, and a high reputation at the bar, is a native of Tennessee, and was born in 1850. He is descended from an American family of the era of the Revolution. His father, A. G. Harris, was in the Confederate Army, enlisting as a lieutenant, and becoming a colonel of his regiment.

Mr. Harris was educated at the Cumberland University, at Lebanon, Tennessee. Having prepared himself for the bar and been admitted to practice by the Supreme Court, he followed the profession at different places in his native state, but for the greater part of the time at Memphis, down to 1875. In that year he came to California, and located at San Bernardino. His name soon became familiar to the bar and people of the southern counties. He built up a large and general practice. He had been in his new home only two years when, in 1877, he was elected district attorney, and served one term.

Mr. Harris remained at San Bernardino for the considerable period of eighteen years. Then, in 1893, he was impelled to seek a larger field. He removed to Los Angeles, and through the years since passed he has been in the most active and profitable practice, and in the front rank of the able bar of that place. His business is of all departments. He is celebrated for his skill and ability in criminal cases, while among his clients also are banking and other corporations.

In politics, Mr. Harris was a Democrat until the year 1896, when he became a Republican because unable to accept the principles of the Democratic platform, adopted at Chicago in that year. He took the platform in that campaign, and made many speeches, principally on the money question.

Mr. Harris is a typical Southerner, and a picturesque character. Of fine face and excellent address, with much kindness of heart and courage of a high quality, he could command success among any people whose language he could speak.

He wears the "Life-saving Gold Medal," presented to him by the government, for great daring in plunging into the surf near San Diego, and bringing to land a young man who was being carried rapidly out to sea, before the eyes of his father and sister.

Mr. Harris is a man of family. His wife was Miss Nettie Allen, a young lady from Ohio, whom he married at San Bernardino.

NICOLAS A. HAWKINS.

Mr. Hawkins was born in Crawford county, Missouri, May 31, 1856. His parents were natives of Lexington, Ky. By them he was brought to California in 1860, and they settled in the Santa Clara valley, where his brothers and sisters still reside, most of them at Hollister. Mr. Hawkins received a liberal education, after which he studied law and was graduated from the Albany Law School in 1879. He located at Hollister. He was district attorney of San Benito county for two terms. In 1887 he removed to Woodland, where he has since practiced. He was successful at Hollister, but gave up a good practice because the climate was too changeable, and upon the advice of physicians, he sought a warmer place. He has been fortunate in his present location in many ways, for he not only has a good business, but enjoys perfect health. His practice is altogether civil, and the most important matters are placed completely in his charge. The people of means take him their business, and it has been his good fortune seldom ever to lose a case. He is accounted a very safe adviser. Almost any one who has had business in Woodland can testify to this. He tries a case fairly well, but it is in office work and the preparation of cases that he excels, and stands out as master of the situation.

Mr. Hawkins is married and has two boys, aged fifteen and twenty years.

BENJAMIN HEALEY.

Benjamin Healey, a very capable and well-known lawyer, has been at the San Francisco bar since 1885. He located in that city in 1874, coming from Cariboo, where he had been engaged in mining for some years. He has raised a large family and acquired a comfortable estate. His special line of business is probate. He is a strongly built man, in the prime of life, keeps at work early and late, and dispatches an enormous amount of business. He has never had a law partner. He possesses the most generous and fraternal nature, and multitudes rejoice at his long prosperity. Some of his children are grown. He owns a fine home on Green street hill, overlooking the bay and ocean.

LYNN HELM.

Lynn Helm was born in Chicago, Illinois, in 1857. He is the son of Stanley T. Helm, a lawyer who has practiced at the Chicago bar since 1854.

Lynn Helm was educated at Princeton College in the class of '79. After graduation he studied law with his father, and afterwards practiced law with his father as the firm of S. T. & L. Helm, in Chicago, until he came

to California. While in Chicago he was employed in some important litigation as to special assessment, and condemnation cases, and also in the trial of damage suits.

Mr. Helm came to California in April, 1896, and since then has practiced in Los Angeles. He has there been engaged in litigation involving a great deal of varied interests. He was acting for the plaintiffs in the case of Garwood vs. West Los Angeles Water Company, and in Palm vs. Denver & Rio Grande Railroad Company. In the last case, a damage suit, he secured a verdict for his client of $13,000, which was ultimately affirmed by the United States Circuit Court of Appeals.

Mr. Helm was married, in 1888, to Miss Annie Horlock, in Chicago. His family consists of his wife and three children. He is a member of the California Club, and is a member and treasurer of the First Presbyterian Church of Los Angeles.

E. W. HENDRICK.

E. W. Hendrick was born in Pike county, Missouri, and resided there until the age of fourteen, when the desire to see the world, so common to the American youth, led him to leave home and try his fortune in the far West. He spent three years in Colorado, Oregon, and California, and finally concluded to obtain a university education. He devoted to study six years in Rhode Island, and graduated at Brown University with high honors. After graduation he spent fourteen months in Europe in travel and study, whence he returned a more ardent American than ever. He came again to California, and after being admitted to the bar, opened an office in San Diego in 1874, since which time he has enjoyed a lucrative practice. Mr. Hendrick represented the county of San Diego as a member of the legislature in 1881. He has been district attorney, and has also occupied other local positions of honor and trust, such as city attorney and attorney for the public administrator. He is associated in practice with Mr. Leroy A. Wright (Hendrick & Wright), and is one of the strongest men at the California bar.

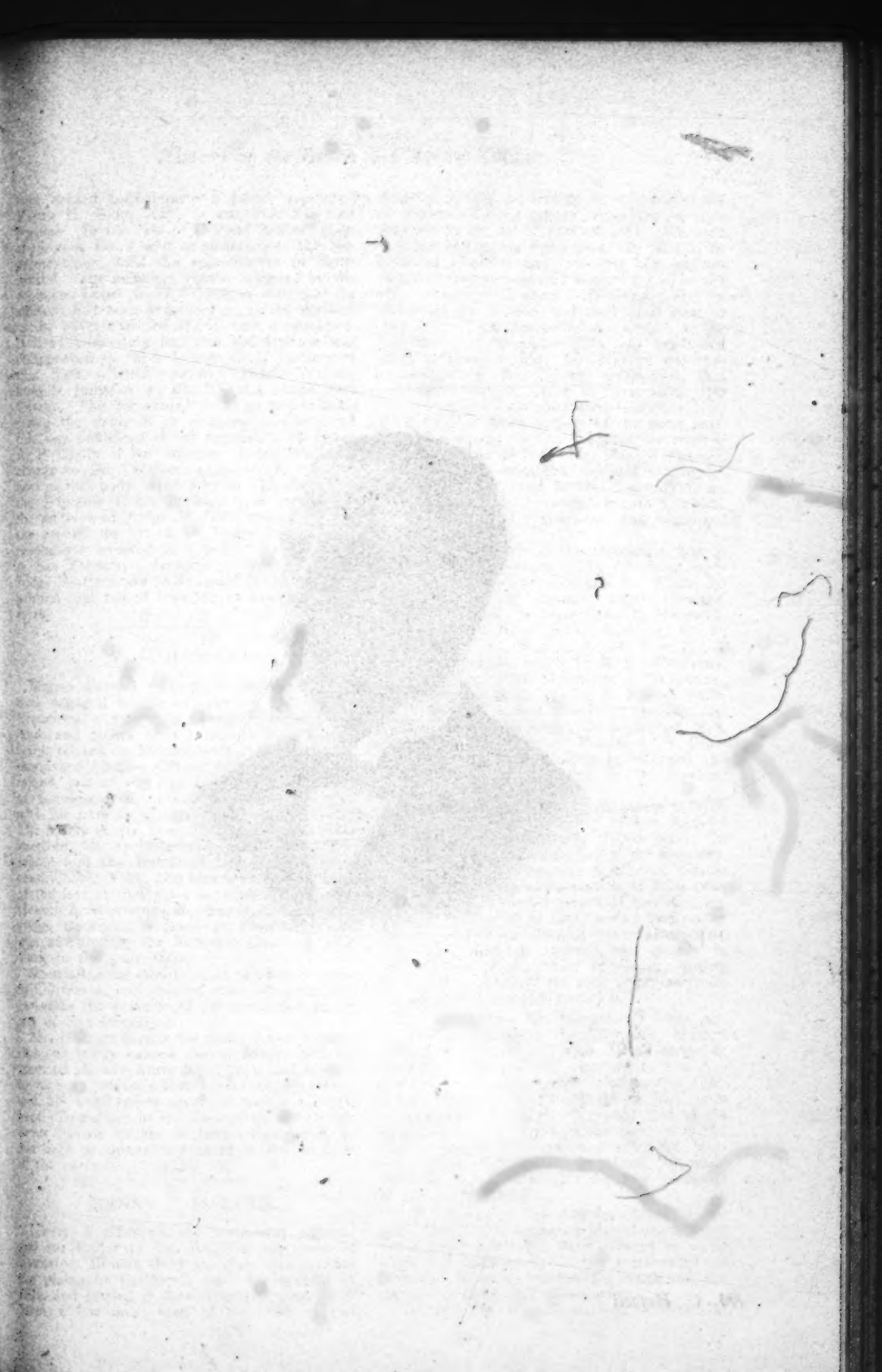
BARCLAY HENLEY.

This gentleman, who has been for a long period a conspicuous figure at the bar of the State, was born in Clark county, Indiana, March 17, 1843. He came to California at the age of ten years. His father, Thomas J. Henley, always a man of commanding influence in the Democratic party, was a representative in congress from Indiana for four consecutive terms, 1842-1849. He was a California pioneer, and represented the Sacramento district in the assembly at the first session of the legislature, 1849-50. He was afterwards commissioner of Indian affairs under the general government. He sent his son, Barclay (he had several sons), back to his native state, where he was educated at Hanover College. The son studied law in San Francisco, and was admitted to the bar of the State Supreme Court in 1864.

Barclay Henley began his distinguished professional career in Sonoma county, where he maintained his residence for many years. He represented that county in the assembly at the eighteenth session, the winter of 1869-70. The legislature was Democratic in both branches. Mr. Henley was chairman of the house committee on federal relations, and offered the resolution rejecting the fifteenth amendment to the federal constitution. In 1875-76 he was district attorney of his county. In the Tilden-Hayes contest of 1876 he was nominated a Presidential elector on the Democratic ticket. In 1880 he was again nominated for that office, and was elected. In November, 1882, he was elected a representative in the forty-eighth congress, and was continued in the forty-ninth congress, his period in the national house of representatives being from March 4, 1883, to March 4, 1887. In both State and federal legislatures he won general applause for his industry, his strong common sense, and his compass of thought in discussion. These are among the qualities that have marked his career at the bar.

Mr. Henley removed from Santa Rosa to San Francisco in 1888, and formed a law partnership with Charles J. Swift and William Rigby (Henley, Swift & Rigby). Mr. Rigby withdrew after two years, and Henley & Swift continued a year longer, when Howard MacSherry took Mr. Swift's place in the firm. In 1893 Mr. Henley formed a partnership with Mr. Stephen V. Costello, the same gentleman who in 1900 was one of the Democratic candidates for Superior Judge. The firm of Henley & Costello has been a leading and very busy one ever since that time. In 1896-97 ex-Judge R. R. Bigelow of Reno, Nevada, was a member of the firm.

Mr. Henley was foreman of the celebrated "Wallace grand jury" of August, 1891. We recall no other instance where a practicing attorney ever occupied such a position. For special reasons, and under peculiar circumstances, the court felt the need of the services of an able lawyer in that capacity. Hon. William T. Wallace, then a Judge of the Superior Court of San Francisco, holding that the sheriff was disqualified to summon grand ju-



M. C. Hassett

rors needed to complete a panel, appointed Henry H. Scott, Esq., as an elisor for that purpose. In the case of Elwood Bruner, upon application for a writ of prohibition, the Supreme Court held the appointment of Scott invalid. The principal reason assigned by the Supreme Court for its decision was that no affidavit had been presented to Judge Wallace to the effect that the sheriff was disqualified. It is an interesting fact that the decision was disapproved by three former Chief Justices of that high tribunal, namely, Judge Wallace himself, Judge A. L. Rhodes, and Judge John Currey. The last named wrote an article criticising the decision in excellent temper, and this was published at the suggestion of Judge A. P. Catlin of Sacramento. Judge Wallace's charge to the "Wallace grand jury," the report of that body, written by Mr. Henley, after the Supreme Court decision just mentioned, the address of Judge Wallace upon receiving the report, the article of Judge Currey, and resolutions adopted at a public mass-meeting in San Francisco, January 5, 1892, sustaining Judge Wallace, are to be found in the libraries, printed and bound together in neat pamphlet form.

M. C. HASSETT.

Martin Carroll Hassett, a resident of and now engaged in the practice of law in San Francisco, was born in county Tipperary, Ireland, and comes of a patriotic Irish family, being related on his mother's side to the distinguished Charles Carroll of Carrollton, Maryland, one of the signers of the Declaration of Independence. He came to this country with his parents when only ten years of age. The family settled in northern New York. He received his early education in the public school and the Keeseville Academy, Clinton county, New York, and commenced his studies of the law at that place with the law firm of Hewitt & Watson, and completed them with Judge Beckwith & Sons, at Plattsburg, and was admitted to the Supreme Court of New York in the year 1869.

Soon after his admission to the bar he came to California, and entered upon his successful career in the practice of his profession in the city of San Francisco.

Mr. Hassett during his many years of practice has justly earned the confidence and respect of all who know him; he would disdain to take an unfair advantage of an adversary, and his word when given is always sacredly kept. In politics he is a Democrat, and though never having sought or held public office, he has been prominent for years in the councils of the party.

HENRY T. HAZARD.

Henry T. Hazard, the prominent political and bar leader of Los Angeles, was born in Evanston, Illinois, July 31, 1844. He crossed the plains to California with his parents in 1852, and settled in Los Angeles county on a farm, a few miles west of the town of Los Angeles, in 1853. In 1860-61 he attended school at Visalia, Tulare county, returning to Los Angeles in the latter part of 1861. He then engaged in farming for a year. In 1863-64 he attended school at San Jose. At Los Angeles again he commenced the study of law in the office of General Volney E. Howard, where he continued for a time, and then went East to Ann Arbor, and completed his studies at the University of Michigan. He was graduated with his class of 1868. Mr. Hazard was correspondent of the Chicago convention that nominated General Grant in June, 1868; also the convention that nominated Governor Seymour in New York in July of the same year. Again returning to Los Angeles, he entered on the practice of law. Mr. Hazard was one of the original members of the Los Angeles Bar Association; and in this connection, we may record that the association named, which, of course, is still flourishing, was organized December 3, 1878.

The main purpose of the association was to establish a law library. The following were the charter members: Stephen M. White, H. A. Barclay, V. E. Howard, F. H. Howard, J. R. McConnell, Andrew Glassell, Henry T. Hazard, A. J. King, B. C. Whiting, W. D. Stephens, A. W. Hutton, E. M. Ross, J. G. Howard, Thos. H. Smith, H. K. S. O'Melveny, J. A. Graves, John Mansfield, J. Brousseau, H. M. Smith, M. L. Wicks, R. F. Del Valle, H. T. Lee. The first officers of the Bar Association were elected on December 10, 1878. They were as follows: President, A. Glassell; vice-presidents, Volney E. Howard and J. R. McConnell; secretary, A. W. Hutton; treasurer, J. A. Graves.

Mr. Hazard has done much public service. He was elected city attorney of Los Angeles in 1881, and filled the term of two years. In 1884 he was elected a member of the assembly, and served at the regular legislative session of 1885, and at the extra session of July, 1886. In 1889 he was elected mayor of Los Angeles, and was re-elected in 1891, seving two terms. As observed by an editorial writer afterwards, "His legal training assisted him greatly in the conduct of the office of mayor, during periods when some of the most important public matters engrossed attention."

For many years Mr. Hazard has made patent law a specialty. In 1887 Mr. Hazard formed a partnership with Mr. George E. Harpham, who had just removed to Los Angeles from San Francisco. The firm of Hazard & Harpham still continues in 1901, with a large patent practice. It is now one of the oldest patent law firms in the city, or in the State. Before his association with Mr. Harpam began, Mr. Hazard practiced for some years in partnership with the late ex-Judge H. K. S. O'Melveny.

The "History of Los Angeles county" (Chicago, 1889), in a notice of Mr. Hazard, says: "His public spirit has been evinced in many ways, but particularly in the erection of an immense pavilion, bearing his name, on the corner of Fifth and Olive streets.

"In 1874 Mr. Hazard married, in San Ga-

briel, the third daughter of Dr. William Geller. They have no children."

When the Southern Pacific Company was asking a subsidy from Los Angeles county, and a bonus to build the road into Los Angeles city, Judge O'Melveny was chairman of the citizens' committee which conferred with Mr. Hyde, the company's agent. The meeting was held and a proposed contract drafted, in the law office of O'Melveny & Hazard. Mr. Hazard inserted in the document a clause which has done more than anything else in its history to make our southern metropolis great and prosperous. After the words declaring that the road should be constructed to Los Angeles, Mr. Hazard inserted the following: "It shall go thence by way of San Bernardino, through the Gorgonio Pass, to a point at or near Fort Yuma, on the Colorado River."

In an address which he issued to the public, when a candidate for mayor, some years afterwards, Mr. Hazard said in reference to this occurrence:

"This clause was objected to by Mr. Hyde, the agent, and he was ordered to return to San Francisco, and the contract was declared off. I still insisted on retaining that clause in the contract, because I knew that if they were permitted to build direct to San Diego, and thence to Yuma, and not go directly from Los Angeles across the continent, our vitality would gradually go to the Bay City, and Los Angeles would be but a way station on the transcontinental line."

We believe that a further and more extended passage from this address of historic interest will be acceptable to the reader.

"We did not then occupy the independent position which we now possess. The committee was inclined to recede from the position and permit this clause to be expunged, but whether you believe it or not, it is due to my determination not to permit the same that the committee finally agreed to stand by it and insist on a route directly east from here, or no subsidy. They were apprehensive that we might get no road unless we receded, but I knew that the road could not be built through the San Fernando Mountains unless the company received our subsidy. I was blamed at the time, but I stood firm. After several months, Mr. Hyde was sent back to renew negotiations and agreed to this condition. I stated that the subsidy would carry with that condition in it, and without it, it would not carry, and I promised that if the clause were retained I would personally canvass the county for the railroad subsidy, which I did. At the request of those acting for the campaign, I took charge of it and made speeches in every important voting precinct in the county. I issued an open challenge to meet any one opposed to the same, and they were many at the time, and I did meet them in many precincts. As a result the bonds were carried by a large majority. After the election was over, I was invited by the Southern Pacific Railroad Company to make out my bill for services. And every one else was, so far as I knew, paid by that company for services in that campaign, and it was the most memorable one in the history of the county, but I declined to receive a cent for my services in that behalf, for the reason that I went before the people as a citizen and taxpayer and not as the attorney of the railroad company.

The road was built, and in 1881, when I was city attorney, knowing the contents of the contract, I demanded the conveyance to the city of the fifty-seven acres which now constitute the East Lake Park, because the company had not complied with the agreement whereby the ground was conveyed to them, viz: That they should establish a workshop thereon. They had erected an old shanty on the ground as a pretense of complying with the conditions. At my own suggestion, single-handed and alone, I began a campaign for the reconveyance of this ground to the city, and succeeded finally in obtaining a deed from the company to the city for the land."

ALEXANDER HEYNEMANN.

Alexander Heynemann was born at Melbourne, Australia, in December, 1858. He located in San Francisco in 1861. He was educated in San Francisco and in Germany. He has been active at the San Francisco bar since his admission by the Supreme Court, December 5, 1879.

THEODORE H. HITTELL.

Theodore H. Hittell, historian and lawyer, was born in Lancaster county, Pennsylvania, in 1830. In 1832 he was carried to Butler county, Ohio, where he passed his boyhood. In 1845 he went to Miami University, and in 1849 he graduated at Yale College. He was admitted to the bar of Ohio in 1852. He arrived in San Francisco in October, 1855, and became assistant editor of the *Bulletin* newspaper, a position he filled from 1856 to 1860. In 1861 he joined the San Francisco bar, and became partner of Elisha Cook. In 1867 he formed a partnership with John B. Felton, which lasted until Mr. Felton's death, in 1878. In 1879 he was elected, from his district in San Francisco, to the State senate, and served during the three years of Governor Perkins' administration. In the legislature he was recognized as a constant and laborious worker, and the greater part of the statutes of 1880 was his work. Among other things he re-drafted the entire Code of Civil Procedure so as to make it fit the new constitution.

Mr. Hittell has done much literary work. His first book, "The Adventures of James Capen Adams, Mountaineer and Grizzly Bear Hunter of California," was published in Boston in 1860. "Hittell's Digest of the General Laws of California" appeared in 1865. He entered upon the preparation of his great work, the "History of California," in 1870. In 1873 he published a review of Goethe's "Faust." His "History of California" was published in 1897. He has published from time to time a

L. M. Hoefler

number of papers on literary and scientific subjects, in addition to those named, and several law books.

Among the important lawsuits with which Mr. Hittell has been prominently connected may be mentioned the Lick Trust case, the Montgomery avenue case, the Dupont street case, and particularly the San Pablo partition case, in which he was the main driving force from 1868 to its successful finish in 1895.

Mr. Hittell was married in June, 1858, at San Francisco, to Miss Elise Wiehe. Mrs. Hittell departed this life at that city in December, 1900. The children are Catherine H. Hittell, of San Francisco, Charles J. Hittell, portrait and landscape painter, of San Francisco, and Franklin T. Hittell, attorney at law, of Ukiah. The only grandchild is Theodore H. Hittell, the son of Franklin.

L. M. HOEFLER.

Here is a busy, well-established lawyer, just entering life's prime, whose sleepless industry keeps him before the eye, and whose character has fixed him in the heart of the profession.

Ludwig M. Hoefler was born in Adrian, Lenawee county, state of Michigan, in the year 1858, and came to California when he was nineteen years of age. The law having early possessed his ambition, he applied himself vigorously to the books, and in due season graduated from the Hastings College with the class of 1882.

Few lawyers in California have served a livelier apprenticeship than Mr. Hoefler. Taking an important position in the law office of the late Alfred H. Cohen, and later with the law firm of Garber, Thornton & Bishop, composed of John Garber, Harry I. Thornton and Thomas B. Bishop, he had the benefit of active participation in the practice and large affairs controlled by those well-known gentlemen, and the stimulus and mental discipline, so important to a young man, which are derived from daily association with men in the very forefront of the profession. It was no small privilege to serve the men he did. It was a great opportunity as well. No one, indeed, has ever more faithfully improved his opportunities or better deserves the success which has come to him.

In 1896 the firm of Bishop & Wheeler was organized, composed of Thomas B. Bishop, Charles S. Wheeler, Ludwig M. Hoefler, Guy C. Earl and William Rix, with offices in the Hobart Building, San Francisco. Upon the withdrawal of Mr. Earl, in August, 1900, the firm was reorganized under the name of Bishop, Wheeler & Hoefler. Mr. Hoefler since the organization of the firm has been one of the busiest lawyers in San Francisco, disposing daily of a mass of work which would be appalling to many lawyers, and impossible to not a few of them. That he is able to accomplish so much, and to do it so well, is due to the fact that legal and executive ability are happily combined in him, that he is quick and accurate in his conclusions, and absolutely unfaltering and untiring in his attention to business. He is a man of phenomenal energy, while his good, easy temper and obliging manner on all occasions win for him universal favor. Those who know him well—and their name is legion, for he has a wide acquaintance over the State—yield him attachment for his broad and liberal, as well as for his unselfish nature. He is, indeed, a true friend and one of the most companionable of men. He is happily married, and has one child, a daughter.

S. SOLON HOLL.

Here is one of our very oldest acquaintances, an early-day police magistrate of the capital city.

S. Solon Holl was born in Lancaster county, Pennsylvania, on the 8th day of July, 1833, of American parents. His ancestors came from Switzerland several centuries ago.

Judge Holl's parents settled on a farm in Stark county, Ohio, where he was brought up from infancy. On March 1, 1850, at the age of sixteen, he started for California. The young man joined a company of about one hundred men, who assembled at Wheeling, in Virginia, during the first week of March, 1850. This company went down the Mississippi River, crossed the Gulf of Mexico to Greytown, on the Central American coast, thence up the San Juan River, and across Lake Nicaragua, to the City of Granada, and thence by ox teams to the port of Realijo, on the Pacific. At this point they took passage for San Francisco, where they arrived, August 17, 1850.

He worked at mining in Nevada City for several years, and then at his trade of carpenter at Grass Valley until 1857. He then located permanently at Sacramento.

It was at Grass Valley, in 1855, that he made up his mind to study law, and for three or four years thereafter he alternately worked at his trade and studied law, first at Grass Valley, and afterwards at Sacramento. While a boy on the farm in Ohio he attended the district school during the winter months of the year. That log school house on the Ohio farm was the first and last educational institution that he ever had the opportunity of attending. But he was a persevering student always, and educated himself.

In 1859 he began the practice of law in Sacramento. In October, 1862, he was elected Police Judge of Sacramento City, and held that office for over three years. Afterwards he was appointed city attorney, and filled that position for one year, when the office was incorporated with that of district attorney. These were the only public offices ever held by him. During his term of office as Police Judge the law prohibiting theatrical performances on Sunday was for the first time enforced. The records of the Police Court of Sacramento city still show judgments imposing fines on McKean Buchanan, Frank Mayo, Mrs. Saunders, Mrs. Judah, Lulu Sweet, William Barry and other stage celebrities, who were convicted before Judge Holl of playing on Sundays.

From that time until the law was repealed it was observed in Sacramento. With the wisdom or policy of the law, Judge Holl had nothing to do, but he strenuously insisted upon enforcing it, as all other laws and ordinances.

For some time after leaving office he gave considerable attention to the practice of criminal law, and was frequently engaged on one side or the other in the prosecution of criminal cases. The most important of these was the case of Bill and Tom Yoakum, at Bakersfield, in Kern county. The Yoakums were indicted for the murder of two men named Johnson and Turner. There were several trials of the case, which created intense excitement in Kern county.

Johnson and Turner were killed by Bill and Tom Yoakum, at Long Tom, in Kern county, in 1878. The double crime was the climax of a long series of atrocities that had run through some years in that county, and in almost every instance there was an utter failure of justice, the criminals escaping punishment. It

seemed impossible to enforce the law against murderers, robbers, burglars, and other criminals. Life and property were unsafe, and there was a deep feeling of anxiety and sensation in the community.

Just at this time occurred within ten miles from Bakersfield the killing of Johnson and Turner by Bill and Tom Yoakum, without the least excuse or provocation. Johnson and Turner were driving along the public highway, John driving a four-horse team, and accompanied by Turner's sister, Turner driving a two-horse wagon, with his wife holding an infant in her arms, and two other small children riding on the same seat with him. Bill and Tom Yoakum were lying in wait behind a ledge of rock, each armed with a Winchester. When the teams reached a point distant about seventy-five yards from the rocks, the Yoakums opened fire, and instantly killed both Turner and Johnson. The Yoakums were arrested, and indicted by the grand jury, two indictments being found against each defendant. At this point Judge Holl was called to Bakersfield by the citizens of Kern county to prosecute the cases.

Bill Yoakum was put on trial first. J. W. Freeman was district attorney. The jury was packed, and in the face of the clearest evidence of his guilt, the verdict was an unqualified acquittal. Then the trouble commenced. The excitement became more intense than ever, and the destruction of Yoakum by the enraged and excited people was prevented largely by the influence and arguments of Judge Holl, who prevailed upon them to await the result of a second trial. Finally this was agreed to, and matters became more quiet. A few months later Bill Yoakum was again put on trial upon the second indictment. Judge Holl then, at the request of the citizens and by the invitation of the district attorney, became the leading attorney in the case for the people. Yoakum moved for a change of venue. The motion was denied, the court being fully aware that to grant the motion would result in the defendant being lynched before he could get out of the court house. This view of the court was fully confirmed by subsequent events. The trial then proceeded, and lasted several weeks. Bill Yoakum was convicted of murder in the first degree, and shortly afterwards sentenced to be hanged by Judge Theron Reed. An appeal was taken to the Supreme Court, and in due time that tribunal reversed the judgment of conviction, and directed the lower court to grant the change of venue. This decision was communicated to Judge Holl, Saturday afternoon, and telegraphed by him to Bakersfield immediately. Within twenty-four hours after this news was received in Bakersfield a crowd of not less than fifty citizens of Kern county, without any attempt at disguise, marched to the jail, broke into it, and in their cells hanged both Bill and Tom Yoakum. The trial was one of the most exciting ever had in the State. A full history of it would read like a romance. Judge Terry was the leading attorney for the defense, and with him were associated a number local attorneys.

Of course, this is a mere synopsis. The history, from the murder of Johnson and Turner to the hanging of the murderers by the mob, is full of sensational and dramatic incidents. On the last night of the trial, the court room was full of armed and desperate men, intent upon killing Judge Terry should he interrupt the closing argument for the people, as he had done during the argument at the first trial. His discomfiture in the attempted interruption saved the court from witnessing a frightful scene.

In January, 1868, Judge Holl was married in San Jose to Miss Julia Hartwell. They have two children, James H. and Charles C. Holl. The former is raising stock in Lassen county, and the later is an attorney.

G. M. HOLTON.

George M. Holton was born at Hillsdale, Michigan, on February 1st, 1845. His father was by occupation a contractor and of Welsh ancestry.

George M. Holton received his education in Michigan, at the Pontiac High School, Ypsilanti State Normal School, and Oxford Academy. He studied law at Pontiac in the office of Hon. M. E. Crowfoot, and was admitted to the bar by the Supreme Court of Michigan in November, 1870. He practiced law at Houston, Texas, for about eight years.

Mr. Holton came to California and settled at Los Angeles in November, 1878. He has been practicing law in that city ever since, except when in public life. In 1884 he was elected district attorney of Los Angeles county, being the first Republican to hold that office; and served the term, which was then two years. It was during his administration of that office that the fine, elevated site, since crowned by the sightly court house, was purchased by the county, the work of passing on the title and preparing the necessary papers being done by him. In 1895-98 he was chief deputy under District Attorney John A. Donnell.

In 1879 Mr. Holton was united in marriage to Miss Cornie E. Arrison, who bore him four children. His wife died in 1892, and but one child, a boy of twelve, is now living. In 1895 Mr. Holton married Zoe Mae Dibble.

Mr. Holton has always practiced law by himself, and is at present located at 218 South Broadway.

F. A. HORNBLOWER.

F. A. Hornblower, Judge of the Police Court No. 1, San Francisco, for the year 1887-88, is a pioneer of August, 1849. In the fifties he followed mining and law practice in El Dorado county, holding several public offices. He removed to Sacramento city, where he was proprietor of the Golden Eagle Hotel for a few years.

He located in San Francisco in 1875, and kept the Commercial Hotel, with Homer P. Saxe, 1876-77. He resumed the practice of law in 1881. He was born in London, England, of parents born in the United States, in February, 1823.

JOHN A. HOSMER.

John A. Hosmer, who was a veteran public prosecutor in San Francisco, was born in Ohio, September 15, 1850. He was admitted to the bar at Virginia City, Montana territory, in 1871, having studied under his father, who was the first Chief Justice of the Supreme Court of that territory. He settled at Stockton, California, in 1873, and was district attorney of San Joaquin county in 1876-77.

Mr. Hosmer removed to San Francisco in August, 1882. He served as managing clerk in the offices of H. E. Highton, John H. Dickinson and E. F. Preston. He was assistant district attorney from 1885 to 1897, excepting the years 1887-88, serving under District Attorneys Wilson, Page and Barnes. He was married in 1884 to Miss Lucie Brewster, a daughter of General John A. Brewster, formerly surveyor-general of this State, who laid out the city of Santa Rosa. They have three children.

Mr. Hosmer comes of a long line of ancestors who have been prominent in judicial life. His great grandfather, Titus Hosmer, was one of the signers of the Articles of Confederation, and afterwards a Judge of an appellate court in Connecticut. His grandfather was a prominent lawyer in Hudson, New York, and his great-uncle, Stephen Titus Hosmer, was for many years Chief Justice of Connecticut. On his mother's side, his uncle, the late Charles Daniels, was for thirty years a Judge of the Supreme Court of the state of New York.

Since leaving the district attorney's office Mr. Hosmer has been at the San Francisco bar, not at all confining himself to the criminal side of the practice, but doing a general business, and being accomplished in all classes of cases.

STEPHEN C. HUBBELL.

Mr. Hubbell was born in New York, May 31, 1841. He was graduated at what is now known as Chamberlain Institute at Randolph. He taught a number of terms in the public schools under a state diploma, preparatory to entering the profession of law. He was admitted to practice in all the courts of the state of New York at Buffalo in 1863, and was subsequently admitted to practice in the Supreme Court of the United States and in all the United States Courts, and settled in Jamestown, New York. There he was married and practiced law until 1869, when his wife died; he then came to California and entered the office of Winans & Belknap, San Francisco, as their chief clerk, that he might become familiar with the California practice.

In 1870 he formed a co-partnership with Hulett Clark, district attorney for San Bernardino county, which partnership continued until the death of Judge Clark, about a year thereafter. In 1873 he was married to Miss Lora A. Loomis of Manchester, Iowa, after which he located at Los Angeles and entered

into the active practice of the law, which has been his main business since that time. He was attorney and counsellor for many years for the street railway corporations of Los Angeles city, and was at one time president of the National Bank of California, and is still a director in that bank.

He has been actively connected with the growth and prosperity of the city of Los Angeles, and in building up its various charitable and religious institutions and in promoting its business enterprises.

He was president of the First Street Railway Company for more than ten years, and was one of the active members of the board of the Los Angeles Cable Railway Company, which expended over two million dollars in building a cable railway system in Los Angeles city.

He was one of the three park commissioners first appointed by the Governor of the State of California for laying out the system of parks in Los Angeles, and acted as park commissioner in laying out the various parks in that city for about six years.

He is now president of the Hubbell Oil Company. His business outside of the law has become so large and takes so much of his time that he has given up the active practice of his profession. He has a beautiful home at 1315 Pleasant avenue, Los Angeles city.

We get our facts from the *California Independent* of September 27, 1900.

A. B. HUNT.

A. B. Hunt represented Santa Clara county in the assembly in 1865. He located at San Francisco on January 1, 1878, changing his residence to Alameda county in 1881.

He was born in New York, February 14, 1837, educated at Oberlin College, Ohio, and was admitted to the bar of the California Supreme Court, July 5, 1868.

Mr. Hunt has been register of the United States Land Office at San Francisco since the 6th day of September, 1898, by appointment of President McKinley.

He was married to Miss Alice C. Pickle at San Francisco, August 4, 1880, and has one son, Reuben G. Hunt, a member of the junior class of the University of California. Mr. Hunt has during each campaign for many years, at the request of the Republican State central committee, stumped the State of California for the Republican party.

FREDERICK M. HUSTED.

Frederick M. Husted, attorney at law, and publisher of many directories of California cities and counties, and of Honolulu and the Hawaiian Islands, located his law office in San Francisco in 1875. He was born in Vermont, July 30, 1850, and was educated at the Northwestern University. He was admitted to the bar in Illinois, shortly before coming to San Francisco. He is still in the practice of law while conducting the business of a directory publisher.

THOMAS HART HYATT, JR.

Thomas Hart Hyatt, Jr., was in the sixties and seventies a popular young lawyer of San Francisco. He was born in New York, August 12, 1841. He prepared for the bar at the Law School at Albany, where he was admitted to practice. He was in the seventies a shorthand reporter with Marsh & Osbourne at San Francisco. Mr. Hyatt was one of the Republican nominees for Justice of the Peace in September, 1867, when his party met defeat. He is now reporting for the Superior Court at Fairfield, Solano county.

Thomas Hart Hyatt, his father, once well known in San Francisco and afterwards a United States Consul in China, was born in New York, February 19, 1809, and died at Winters, Yolo county, California, February 11, 1881. Hon. Hart Hyatt North, commissioner of immigration at San Francisco, is a nephew of Mr. T. H. Hyatt.

LEIGH H. IRVINE.

This gentleman, who has attained celebrity as a writer of fiction, is a lawyer by profession, although he has had little to do at the bar since locating in San Francisco. Some very interesting men have turned aside from the law in our chief city to win fortune in other lines. We could add many names to those of James B. Haggin, the multi-millionaire, now of New York City; Lloyd Tevis, his partner, and the king of business men, who died at a great age in 1899; Henry L. Dodge, the opulent San Francisco merchant; James R. Garniss, the resident manager at San Francisco of the American Surety Company, who retired in October, 1900, after a long successful business career, and Colonel John P. Jackson, late collector of that port.

The men who have drifted from law into journalism are—well, their name is legion.

Mr. Irvine was born at Oregon, Missouri, on the 28th day of November, 1860. His father, Clark Irvine, was a lawyer and author, of old American ancestry. Mr. Irvine was educated at the State University of Missouri and at the Columbia Law School, where he was a pupil of the eminent Judge Philemon Bliss. He was admitted to the bar at Kansas City, Missouri, on the 3rd day of March, 1882, and practiced for about five years at Kansas City. In the year 1887 he was the Democratic candidate for Police Judge of Kansas City, Missouri. He came to San Francisco in 1888, and has since been connected in an editorial capacity with all the great dailies of that city, and also the Sacramento *Record-Union*. He wrote his first novel in 1893, entitled "Told in Whispers."

He has since written the following: "The Wolf at the Door," "The Struggle for Bread" and "An Affair in Mid-ocean." In 1899 he began a thorough study of the art of writing romance, and his stories dwell on the charm of incident rather than the subtlety of character. He has also written widely for magazines on sociological matters. In fiction Stevenson

is his ideal, and the South Seas are his field. He spent several years in the islands gathering data for his work.

Mr. Irvine's plots and his style of writing have won the commendation of the severest critics in California, in eastern cities, and even in London. He is now settled at San Francisco, still occupied in writing romances. His latest production, "An Affair in Mid-ocean," was published by T. Fisher Unwin, London.

In person Mr. Irvine is of large build, being six feet tall and weighing nearly two hundred pounds. He is practiced in athletic sports and has extraordinary physical strength, being a man of brawn as well as brain. He is a constant associate of lawyers and popular with all classes. He married at San Jose, on the 18th day of May, 1898, Miss Rosalie Younger, a lady of fine education and literary ability. She has been his constant companion and severest critic in his later literary work. His happiest hours are in his library at home, and the great masterpieces have more charm for him than courts, though he often lectures, and is fond of public speaking.

CHAS. H. JACKSON.

Charles Hooper Jackson is the eldest son of Colonel John P. Jackson, who was subtreasurer of the United States under President Harrison, and who was under McKinley collector of the port of San Francisco. His mother, Louisiana Hooper, was born in Kentucky, of good old Kentucky stock. Some of her male progenitors fought in the War of 1812, and also the War of the Revolution.

His father was born in Cleveland, Ohio. In the War of the Rebellion the latter served as Colonel of the Twenty-third Kentucky regiment.

Mr. Charles H. Jackson was born in Newport, Kentucky, in 1858. He came to California in 1869. He is a graduate of the whole public school system of California, including the Lincoln Primary, Lincoln Grammar, Boys' High School, and Hastings College of Law. He graduated from the academic department of Harvard University in 1881 with honors in history and philosophy. He studied law in the offices of McClure, Dwinelle and Plaisance and General W. H. L. Barnes. He was commissioned a notary public on January 8, 1883, and held the office many years. On January 4, 1887, the Superior Court appointed him a court commissioner. In 1889 he was assistant district attorney of San Francisco. He was deputy attorney general under W. H. H. Hart, and also under W. F. Fitzgerald, being the only one of General Hart's staff appointed by General Fitzgerald—a flattering recognition of the value of his services.

In 1896 Mr. Jackson was nominated by the Republicans for the office of city and county attorney, and was defeated by a small majority. In 1899 he was again nominated for the same office but was defeated, as the city went overwhelmingly Democratic. In 1898 he received a nomination for the Superior Judgeship, but refused to run. In 1886, after a spirited battle at the polls, Mr. Jackson was elected a delegate to the Republican State convention. He was one of the founders of the Dirigo Club, now the Union League Club of San Francisco. He is a member of the Harvard Club of San Francisco, a life member of the Olympic Club, of the Elks, of the California Commandery of Knights Templar, and of Eureka Lodge, No. 4, I. O. O. F. For several years he was president of the American Shakespeare Society, of San Francisco. Mr. Jackson married on December 15, 1886, Harriet Elizabeth Couch, and has a son, John P. Jackson, 3rd, aged five years. John P. Jackson 2nd is Mr. Jackson's brother.

While deputy attorney general, Mr. Jackson devoted most of his time to brief work, writing most of the briefs and arguing a great number of cases.

JOHN P. JACKSON.

Colonel Jackson, who has played so important and conspicuous part in public affairs in this State, is a lawyer of ability, although not often seen at the California bar. He has a record of fifteen years' successful practice at the bar of Cincinnati, Ohio, where he was admitted in the year 1854. His mind was turned to the law by the Ohio scholar and advocate, Bellamy Storer, who had heard him, in his twentieth year, deliver an address to Kossuth, as the spokesman of the young men of Cincinnati when the great man was visiting that city. In the National Cyclopedia of American Biography, it is written of this effort, that the young orator was cheered from the beginning to the end of his address.

A large part of the Colonel's practice, peculiar to himself, was in cases before courts-martial and military commissions. Among the most noted of these was that of the "Chicago Conspirators," who were tried for their attempt to release the Confederate prisoners confined at Camp Douglas during the Civil War.

Colonel Jackson gained the title by which

he is universally known, in that great conflict, through which he fought. In 1867 he went to Europe to negotiate bonds of the California Pacific Railroad Company, which led to his coming to California to take charge of the affairs of that company. He remained its president until the purchase of the road by the Central Pacific Company.

Colonel Jackson bought the San Francisco *Post* in 1875, and conducted it successfully for ten years. Afterwards, for some three years, he owned and conducted the San Francisco illustrated weekly, *The Wasp*. He was United States treasurer at San Francisco during the administration of President Harrison, and now, under President McKinley, is collector of that port.

The Colonel was born at Cleveland, Ohio, March 7, 1833. In 1857 he was married to Miss Anna Hooper daughter of Edward James Hooper, of Kentucky, and has seven sons and two daughters. He is a man of means, and has a delightful home on Sutter street, San Francisco.

Although we have said that Colonel Jackson has not been at this bar, the statement is not altogether exact. He is a regularly constituted member of the California bar, having been duly admitted by the Supreme Court of the State to practice in all the Courts thereof; and for some years after coming to California he acted as advisory counsel to the various railroads with which he was connected, namely: The California Pacific, the San Francisco & North Pacific, the Stockton & Copperopolis, and the Los Angeles & Independence Railroads.

After the foregoing had been prepared and put in type, Colonel Jackson met with a sudden and serious illness in September, 1900. He underwent a capital operation for kidney trouble, from which he did not rally, but died in San Francisco, September 25th.

Colonel Jackson was one of the most active spirits that ever figured in the political history of this State. His familiar figure was always seen, and his influence felt at county and State conventions of his party. He was enthusiastic and industrious in all his undertakings. He raised a large family with rare paternal solicitude.

MYER JACOBS.

Myer Jacobs was born at San Francisco, California, November 12, 1856. He was educated in the public schools of San Francisco and was graduated from the San Francisco Boys' High School in 1872. In 1876 he was graduated from the University of California, receiving from that institution the degree of Ph. B. In 1879 he was graduated from the law department of Columbia College, New York, receiving the degree of LL. B. In the same year the University of California conferred upon him the degree of Master of Arts. In May, 1870, he was admitted to the bar of the State of New York, and in July following, to the bar of his native State of California.

Mr. Jacobs has been in constant, active practice since his admission up to the present time. He has devoted himself more particularly to mercantile and probate cases. From 1891 to 1893, he occupied the position of first assistant city and county attorney of San Francisco.

In politics he has always been a Republican, and for many years was very active in political matters, holding important and responsible positions in his party organization. In 1892 he was the regular Republican nominee for city and county attorney of San Francisco, but was defeated by Hon. Harry T. Cresswell, Democrat.

He is a member of Doric Lodge, No. 216, F. and A. M., and has been connected with the Masonic Order for several years.

I. EDWARD JARRETT.

Mr. Jarrett was born in Union county, Pennsylvania, October 21st, 1850. His paternal ancestor was a descendant of Hon. Thomas Jarrett, who was commissioned surveyor in Maryland, by the command of William and Mary of England. The father of I. E. Jarrett was an old and esteemed resident of the Keystone State, who responded to his country's call in 1861, and served with honor and distinction as a Union soldier, through the Civil War. He was a Republican in politics, and held several public offices. The son followed in the footsteps of his father, and cast his lot with the Republican party.

I. E. Jarrett was educated in the schools of Pennsylvania, and received certificates of educational merit whereby he became a public school teacher, which profession he followed for several years. Shortly after his arrival in San Francisco, he took up the study of law, receiving his initiation into the mysteries of Blackstone through the tutorship of some of the lights of the bench and bar of California, who were prominent in the "seventies." He was admitted to practice law by the Supreme Court of the State in August, 1880, and has followed the profession for the past twenty years.

Mr. Jarrett has been publicly recognized as an organizer and political factor of influence by the Republicans of his district, who gave him the nomination for State senator. He polled a highly complimentary vote for an office he did not seek.

In the conduct of legal practice, pertaining to matters affecting fraternal and beneficiary insurance orders, Mr. Jarrett has proved a successful practitioner. In cases where questions of parliamentary and fraternal ethics were before the civil courts for adjustment, and where vital questions were at stake, his points of law have generally been sustained. He is a reliable authority on the matters affecting the rights and jurisdiction of fraternal associations.

Mr. Jarrett has been the presiding officer of more than twenty social, political and fraternal clubs, societies and orders in the past twenty years. He held the office of district deputy grand master of the I. O. O. F., in 1876, and is at present an active and trusted officer of Golden Gate Lodge, No. 204, I. O. O. F. He has been successful in many important, intricate and closely contested cases in the civil and criminal practice of law, and particularly in probate and mining cases, and in the adjustment of claims. He has a clientage composed of some of the most responsible people, located all over the Pacific slope.

WILLIAM A. JOHNSTON.

William Allen Johnston was born in San Jose, Cal., September 29, 1856, of parents who had braved the dangers and privations of crossing the plains in the early days. He received his early education in the public schools of San Jose, and graduated from the University of the Pacific in June, 1876, receiving the degree of bachelor of arts, and afterwards that of master of arts from the same institution. He studied law in the law department of the University of Michigan at Ann Arbor, under Judge Thomas M. Cooley, who was then its dean, receiving the degree of bachelor of laws in 1878, and was admitted to the bar in the States of Michigan and California in the same year, being then twenty-one years old. Entering upon the practice of the law in San Jose, Cal., he soon became associated in business with the Hon. Thomas H. Laine, who at one time was State senator, and a member of the constitutional convention of 1879, one of the foremost lawyers and orators of the State, and the Hon. John H. Moore, at one time County Judge, the firm name being Moore, Laine & Johnston. This firm having a large and select clientage, offered opportunities not always enjoyed by those just setting out in the practice of the profession. These Mr. Johnston recognized, and working early and late, rose rapidly at the bar, appearing in a number of cases famous in the history of his county. Too zealous application to his work, however, told upon his eyes, and operations upon them proving unsuccessful, he was compelled in the spring of 1883 to abandon the practice for a season in the hope of relief. In January, 1884, he again formed a partnership with the Hon. Thomas H. Laine, the firm name being Laine & Johnston, but his eyes again failed him, and he purchased an orchard home in the country, to which he retired in the winter of 1884. In 1890 he had so far recovered that he again, at the solicitation of wealthy clients who sought him out in his country home, entered upon the practice of the law, which he has since continuously followed.

Mr. Johnston has not sought the theatrical part of the profession, and, although at an earlier period he appeared in some noted criminal cases, yet for years he has devoted himself exclusively to the civil side of the practice. He is attorney for several large corporations, and has a select and wealthy clientage.

ALBERT F. JONES.

Albert F. Jones, of the bar of Butte county, has practiced continuously at Oroville since the 1st day of January, 1880. Mr. Jones is a native of Colusa county, California, where he was born on the 14th day of February, 1858.

His father, George F. Jones, at that time was engaged in the cattle business, and in the following year was elected sheriff of Colusa county, an office which he filled for four years.

A. F. Jones was educated in the common schools of Colusa county until the year 1864, when he removed to Chico, in Butte county, where he attended the public schools when not engaged in clerking. In 1884 he attended the Golden Gate Academy, and thereafter University Mound College, at San Francisco, from whence he entered Yale University, at New Haven, Conn. He graduated from the law department of Yale in 1879, and was then admitted to practice in the courts of Connecticut. In July, 1879, he was admitted to practice in the Supreme Court of California, and in 1885 to the United States Circuit and District Courts.

Mr. Jones was married in 1881, and has a family of three children. In the early days of his practice he took quite an interest in the politics of Butte county and of the State. He was elected district attorney in 1882, and served two years. He was elected senator of the fourth district in 1885, and served during two sessions of the legislature, being chairman of the committee on State prisons at the first session, and chairman of the judiciary committee in the senate in the session of 1888. Since that time he has given his attention almost entirely to the practice of his profession, paying none to politics except to attend State conventions, and devoting a short period at times to public speaking.

From the beginning of his professional career, Mr. Jones has been very successful, and has a large and remunerative practice, with a clientage not only in Butte county, but extending throughout California and in adjoining States.

In addition to his professional matters, he has been prominently connected with business enterprises in the community in which he resides, and has found time to attend to fraternal affairs, being a past grand president of N. S. G. W., an officer of the grand lodge of the I. O. O. F., and a member of the Masonic Order.

WILLIAM H. JORDAN.

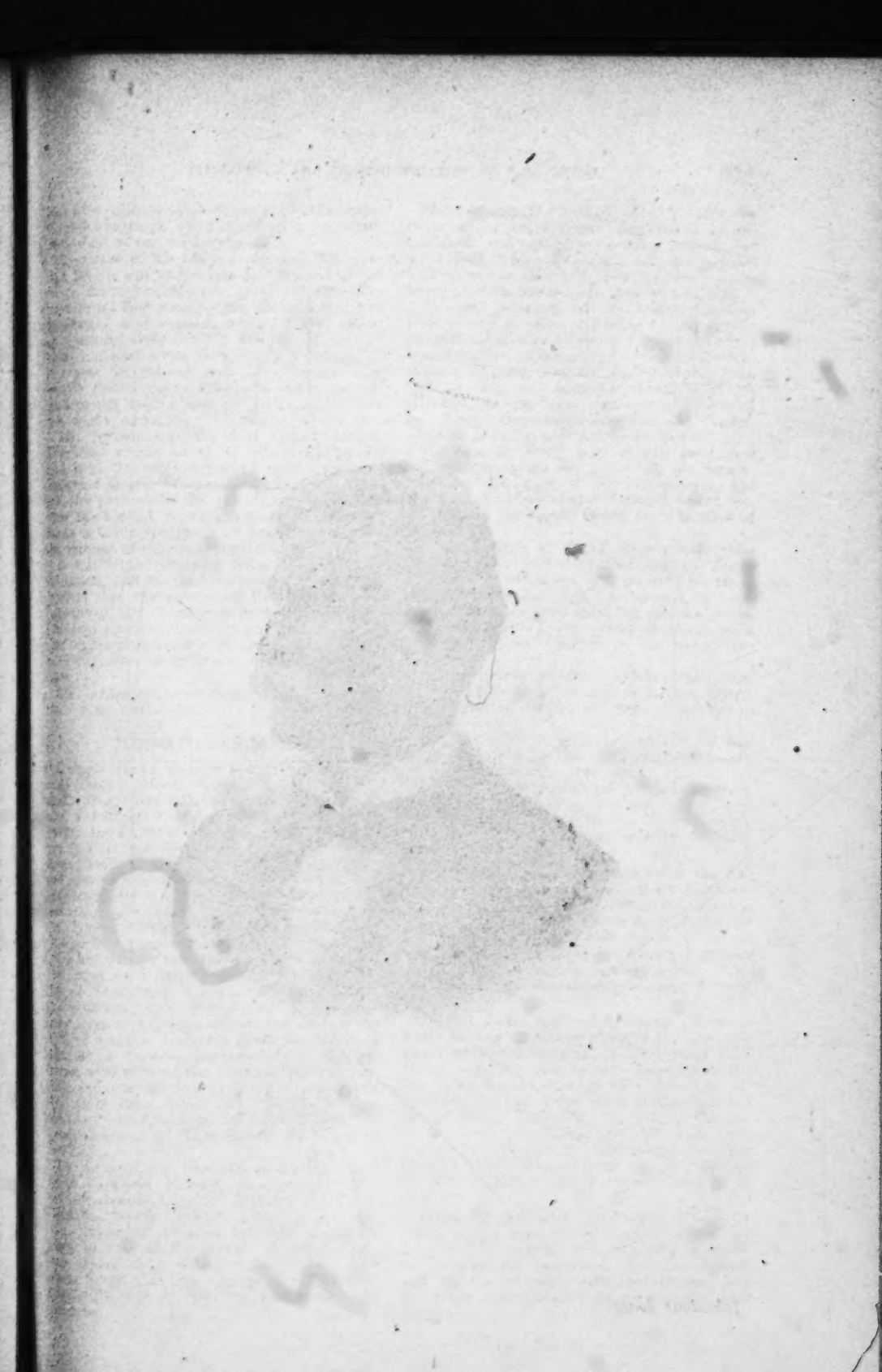
Mr. Jordan, speaker of the assembly in 1887, was born in Cincinnati, Ohio, on the 3d of September, 1849. His father was a carpenter and farmer. The family has been in America since 1630, when its progenitor in this country, Robert Jordan, a clergyman of the Church of England, settled in Portland, Me. Mr. Jordan came with his father and family to California in 1859, driving an ox team across the plains, and walking most of the journey. They settled on the Sacramento river, near Red Bluff, and our friend, then ten years old, passed his first winter in the State in driving an ox team with lumber to a point on the river for shipment. The great flood of the winter following (1860-61) destroyed his father's property. His mother, too, had died, and father and son removed to San Jose. The boy there began making his own way in life, setting out alone in quest of the employment most familiar to him. He found it on a farm near Pescadero. After a few years, when he became fifteen, he went to Oakland, with the purpose of getting an education.

He had accumulated by his work on the farm $185. Getting the place of janitor in the Brayton school, and that of sexton in the First Congregational Church, he entered the first-named institution as a student. He had been there about one year when he resolved to make an effort to enter the State University, which was then just being put into working order on its permanent site at Berkeley. When he presented himself there he heard the regents discussing a proposition to charge students an annual fee of $100. There was a division of sentiment, and one regent declared his opinion that any young man who could not afford to pay $100 a year for his education was not worth educating. But just then, while his application was pending, he was, through the kind intervention of a friend, invited by a benevolent gentleman of Norwich, Connecticut, to go thither and live, and attend the Free Academy there. Accepting the offer, he attended that academy for one year. He then entered Yale College. This was in 1871. Mr. Jordan remained at Yale but two years, so that his education, as far as systematic study in the schools is concerned, is comprehended in two years at Brayton in Oakland, a year at the Norwich Free Academy and a year at Yale. His withdrawal from Yale was enforced by failing health.

Returning to California in the fall of 1873, Mr. Jordan went into business at Oakland, organizing and managing the Real Estate Union there, and afterwards the Oakland Woolen Mills. His relations with the public-spirited capitalist, Mr. Anthony Chabot, were such that he obtained from that gentleman the donation for the astronomical observatory, and under a commission from Mr. Chabot, he visited the Eastern states and secured the glasses for the telescope, an eight-inch refractor made by Clark. He was twice elected a member of the board of education of the city of Oakland, and served as such for four years, 1881-85.

Mr. Jordan was first elected to the assembly from Alameda county, in the fall of 1884. Two years later he was re-elected, and was chosen speaker. He was the unanimous choice of the Republican caucus, and was elected speaker by a majority of one vote, that being the strength of his party in the house: and he presided much of the session over a Democratic body.

He maintained himself through the session with great dignity and capacity, there being no whisper against the correctness of his rulings. It fell to him at one time to publicly reprimand one of the assembly clerks for attempting to alter the position of bills upon the file. This he did by order of the house, and with excellent judgment. At the close of the session the members, as a delicate mark of their personal esteem for him, presented



Johnstone Jones

his wife with a magnificent pair of solitaire diamond earrings, and himself with a magnificent solid silver tea service.

By virtue of his office of speaker, Mr. Jordan held a seat in the board of regents of the State University for the years 1887-88. We have heard him speak of the thought that was uppermost in his mind, when he first sat in that learned body. What was it? It was the remark made, some sixteen years before, by a regent in whose seat Mr. Jordan now rested, that a young man who could not afford to pay $100 a year for an education was not worth educating.

Mr. Jordan was the first Grand Master Workman of the A. O. U. W. in California, and held the office a second term. He was Supreme Master Workman of this great order for the year 1888, the jurisdiction extending over the United States and Canada. He then made a protracted tour of both countries in the interest of the order named.

It was while returning from this circuit of visitation, and at Cincinnati, in 1888, that he learned that the faculty of Yale College had just given him the degree of Master of Arts. His two years at Yale did not entitle him to this distinction, under the rules, but it had been conferred upon him at the request of his class.

Mr. Jordan has been practicing in San Francisco since July, 1885.

JOHNSTONE JONES.

General Jones was born at Hillsboro, Orange county, North Carolina, September 26, 1848. His father was Cadwallader Jones, who was a prominent lawyer and politician, and during the Civil War colonel of the Twelfth South Carolina Regiment. His mother was Annie Isabella Iredell, daughter of Governor and United States Senator James Iredell, and granddaughter of James Iredell, one of the Associate Justices of the Supreme Court of the United States, appointed by President George Washington.

On his father's side, General Jones is lineally descended from Peter Jones, who founded the city of Petersburg, Virginia, and later Major Cadwallader Jones, who served in Washington's army as a cavalry officer, and also on the staff of General Lafayette. On his mother's side, he is lineally descended from General Ireton, who married the sister of Oliver Cromwell, and commanded Cromwell's army, and also, from John Alden and Priscilla Mullen, and more remotely from Sir Cullo O'Neil, the standard-bearer of King Robert de Bruce of Scotland.

The General was educated at the Hillsboro, North Carolina, Military Academy, in 1862, and the South Carolina Military Academy, Columbia, South Carolina, 1864.

In November, 1864, at the age of sixteen years, he entered the service of the Confederate states, as a volunteer in White's Battalion, South Carolina Cadets. He served in Elliot's Brigade of Hardee's army, until the surrender.

He commenced business life in 1865 as clerk in a country store. Afterwards he established and edited a country weekly at Rock Hill, South Carolina, and later owned and edited the Charlotte, North Carolina, *Observer*, a daily newspaper, from 1871 to 1874.

He was secretary of the North Carolina state senate in 1874; secretary of the constitutional convention of North Carolina in 1875; representative of Buncombe county in the legislature of 1885, and for twelve years, from 1877 to 1889, was adjutant-general of North Carolina, having been successively appointed by three Governors—Zebulon B. Vance, Thomas J. Jarvis and Alfred H. Scales.

He took an active part in national guard matters during all the period of his incumbency of the office of adjutant-general, and was vice-president of the National Guard Association of the United States for a number of years.

Owing to the ill health of his wife (nee Elizabeth W. Miller of Wilmington, North Carolina, to whom he was married in 1873) he removed to San Diego, California, in August, 1889, and entered upon the practice of the law in partnership with James E. Wadham, a prominent young attorney of the San Diego bar.

At the general election in November, 1890, the year following his arrival in San Diego, he was elected district attorney of San Diego county.

On November 1, 1893, he removed to Los Angeles, where he has been engaged in the practice of the law ever since.

In 1896 he was nominated by the Democrats, Silver Republicans, Populists and Labor Party for the State senate from the Thirty-seventh senatorial district, and was defeated by Hon. R .N. Bulla.

In 1898 the General came out for the Republican ticket, taking the stump for Gage for Governor and Waters for congress. He believes in the policy of expansion, and voted for President McKinley in 1900.

In 1899 he was appointed assistant district attorney of Los Angeles county by Hon. J. C. Rives, district attorney, which office he still holds.

General Jones acquired his legal education while serving as deputy clerk of the Supreme Court of North Carolina, in 1868, 1869, 1870. In his twentieth year he was admitted to the bar in his native state, in 1869. He was admitted to the bar of the Supreme Court of the United States December 17, 1885; to the bar of San Diego, on motion of E. W. Britt, September 11, 1889; to the bar of the Supreme Court of California, October 19, 1891, and to the United States District Court, March 12, 1892.

When the war with Spain opened General Jones, in ten days, raised a full regiment of men in Los Angeles and adjoining counties, and was elected its colonel. He offered himself and the regiment to the government, but, not being needed, they were not mustered into service.

ALBERT H. JUDSON.

Albert H. Judson was born in Portland, Chautauqua county, New York, in September, 1838. He received an academic education at Fredonia, in that state, and for a time followed teaching and civil engineering, but subsequently studied law and was admitted to the bar by the Supreme Court of his native state in May, 1861. He soon after commenced practice in Fredonia, and has been in active practice over thirty years.

He came to California in 1871, settling first at San Leandro, the county seat of Alameda county, where he practiced law and at the same time had editorial charge of the *Alameda County Gazette*. He moved to Los Angeles in 1873. Here he opened a law office, and soon organized an abstract and title company, under the firm name of Judson & Fleming, which was shortly succeeded by that of Judson & Gillette. Subsequently Mr. F. A. Gibson, now cashier of the First National Bank of Los Angeles, became a member of the firm, which now took the name of Judson, Gillette & Gibson, which became a leading concern in Southern California in all matters relating to abstracts and certificates of title. Mr. Judson inaugurated the practice of issuing certificates of title in place of abstracts and opinions thereon. Now the certificates of title are in almost exclusive use. The firm of Judson, Gillette & Gibson did a large and profitable business for many years, Mr. Judson retiring from the firm in 1885, but remaining as its legal adviser until 1887. He then abandoned the law for a time in order that he might give his entire attention to the management of several corporate enterprises of which he was president, and in which he was largely interested, notably, the Los Angeles Packing Company, the Los Angeles Cemetery Company, the Hemet Land Company, the Hemet Water Company, and many others. He was at one period a heavy operator in real estate in Southern California, and his name was a very frequent one on the records of Los Angeles and adjoining counties for many years.

Mr. Judson was in 1881 a candidate on the Republican ticket for Superior Judge, and, though he ran largely ahead of his ticket, he failed to overcome the heavy Democratic majority of those days. Mr. Judson was also a candidate in 1879 for city attorney of Los Angeles, but the entire Republican ticket was beaten.

The title business heretofore alluded to was subsequently merged in what is now known as the Title Insurance and Trust Co. Mr. Judson has never been an active politician. The following is taken from a newspaper published in Los Angeles city at the time Mr. Judson was a candidate for Superior Judge:

"As a lawyer Mr. Judson is held in high estimation by a numerous clientage who value a well-considered opinion. His private life is as pure and blameless as his business career has been honorable and useful. He has qualities that admirably fit him for the bench, among them a broad, liberal and expansive mind, a judicial habit of thought and a thorough knowledge of the law. Mr. Judson has always, when in practice, given special attention to the laws bearing on real estate titles, water rights, mines and corporations."

Mr. Judson was married in 1867 to Sarah Fairman, of Elmira, N. Y., by whom he had seven children. Three of them survive. He is in religion independent, with a leaning towards Unitarianism.

FRANK P. KELLY.

Mr. Kelly was born January 7th, 1854, in the city of Philadelphia, Pa. He began life as an errand boy in H. G. Leisenring's printing office in that city. He then began to learn the printer's trade. He moved to Sacramento, Cal., in March, 1867. There he finished the trade in H. S. Crocker's printing office. In Sacramento he engaged in literary pursuits. He was a reporter at the age of twenty. Removing to Tehama he became owner and editor of the Tehama *Tocsin*, from 1878 to

1882. He moved to Santa Barbara in 1883 and became editor of the Santa Barbara *Press*. In the next year he was in Los Angeles managing the *Daily Evening Republican*. He was managing editor of the *Evening Express* of Los Angeles later in 1884.

Mr. Kelly was admitted to practice law in Los Angeles in September, 1884. He was assistant city attorney of that city under Hon. J. W. McKinley, 1885-6. He was elected District Attorney in November, 1888, for Los Angeles county and served with distinction for the term of two years. There were 27 convicts sent to the different State prisons during his term, a greater number than ever before or since in the same length of time. Mr. Kelly is well and favorably known as a eloquent and forcible speaker, both on the rostrum and before a jury. He moved to San Francisco in January, 1893, to take the position of attorney in all criminal cases for the South

ern Pacific Company and the Market Street Railway Company in the City and County of San Francisco. This position he still holds. He is a man of energy and a large part of his success in life is due to his ability to act quickly and close up the business entrusted to him.

A more extended notice of Mr. Kelly, with a fine portrait, appears in the "Illustrated History of Los Angeles County" (1889).

WILLIAM T. KENDRICK.

William T. Kendrick, of the Los Angeles bar, was born in Palestine, Texas, June 11, 1854. He was educated in Kentucky University, at Lexington, Ky. He was admitted to practice in the Supreme Court of California in 1879, and at once began the practice of the law in Oakland. He opened an office in Los Angeles in 1882, and since that time has continued there in the active practice of his profession. Many of the most important cases in that and adjoining counties have been conducted by him, as appears from the Supreme Court reports of this State.

He is a man of family, having a wife and six children.

Mr. Kendrick was in partnership with that old veteran of the Los Angeles bar, J. B. Hollaway, now retired, for eight years. He is at present associated with W. S. Knott, a nephew of ex-Governor J. Procter Knott, of Kentucky.

S. V. LANDT.

Sanford V. Landt was born in Herkimer county, New York. The first thirteen years of his life were spent on his father's farm there, with plenty of work, and little time at the common country school. The following year, by the death of his father, he was thrown upon his own resources, and with his earnings as a farm laborer during the summer months, he attended school during the winter. At the age of sixteen years he secured the necessary certificate of qualification, and for the four following months taught school and supplemented his salary as teacher by what he could earn at farm labor in harvest time. He thus covered the necessary expense of his fall and spring studies at Fort Edward Institute, in Washington county, New York. The next four years he studied law in the city of Albany as a student in the office of Hon. Lyman Tremain and Rufus W. Peckham, the latter now Justice of the United States Supreme Court, and at the Albany Law School. He was admitted to practice in New York state in 1865. In 1867 he removed to the state of Iowa, locating at Tipton, in Cedar county, and became law partner of the Hon. William P. Wolf. There he continued in the active practice of his profession as member of the well-known law firm of Wolf & Landt until 1887, when he removed to Los Angeles, California.

Although he never sought political position, Mr. Landt held the office of mayor of the city of his residence in Iowa, being elected to that place in 1876 by a large majority. He was elected in 1877 and again in 1878, the two last terms by unanimous vote of the people, no opposition candidate being put in nomination by either party. He was, for the ten last years of his residence in Iowa, chairman of the county central commitee of his party (Republican).

In September, 1868, Mr. Landt married Miss Bertha Brouse, first cousin of Bishop Albert Cameron of Canada. Mrs. Landt was well known in Los Angeles, as well as at her Iowa home, for her noble deeds of charity, as well as church work. She was one of the first to assist in the work of organizing St. John's Parish, Los Angeles, its incorporation being accomplished at her residence. She died in that city, May 31, 1897, leaving a son, Edward B. Landt, and a daughter, Katherine C. Landt, both still residing with their father at 2131 Estrella avenue.

E. O. LARKINS.

Elwood Oliver Larkins has been actively engaged in the practice of law since 1886, residing at Visalia. His professional business has comprised much of the heavy litigation of the San Joaquin Valley, although confined mostly to civil cases. His specialties are

water rights and land titles. Of late he has been occupied with cases in the State and Federal courts involving title to petroleum oil locations. Although he has devoted himself industriously to his profession, he has taken considerable interest in politics, being an enthusiastic Republican, and having stumped the northern part of this state for Senator Geo. C. Perkins when he was a candidate for Governor. He has taken part in nearly every campaign since that time, making a hard fight for President McKinley in 1896. He is a director in the Bank of Visalia, and has considerable business interests in and around that city. At the last Republican state convention, held at Sacramento in 1898, he placed in nomination the Hon. M. J. Wright

for Surveyor-General. He has served in the state conventions on important committees at various sessions. He is a Mason and Odd Fellow in high standing, and takes great interest in educational affairs, having been recently appointed one of the Educational Commissioners by Benjamin Ide Wheeler, David Starr Jordan and the Superintendent of Public Instruction, to meet at San Francisco for the discussion of educational matters of concern in the State.

Mr. Larkins was born in East Liverpool, Ohio, on December 16, 1854; graduated at the State Normal School at Kirksville, Mo., in 1876; came to California in 1876, and engaged in the profession of teaching for several years, during which time he was principal of several important schools. He is the son of J. B. Larkins, whose father married Mary Oliver, a native of Pennsylvania, and a relative of Oliver T. Morton. William Larkins, grandfather of J. B. Larkins came from England at an early day, and fought on the American side in the War of 1812. In 1880 Elwood O. Larkins (or E. O. Larkins, as he is commonly called) married Miss Sallie C. Calloway, of Waverly, Mo., who is a descendant of the Boone family of Kentucky, and who is closely related to the Hardins of that state. Her father's sister married a cousin of Robert E. Lee. The Sebring Bros., of Sebring, Ohio, who are extensively engaged in the manufacture of chinaware, famous throughout the United States, are cousins of the subject of this sketch. For a short time Mr. Larkins was engaged in the practice of law with Hon. J. F. Wharton, in Fresno, and later for many years with the Hon. Tipton Lindsey of Visalia, but he is now alone in the practice, his former partners both being dead.

ARTHUR L. LEVINSKY.

Arthur L. Levinsky was born in Jackson, Amador county, California, on July 9th, 1856. He was educated in this State, in the public schools, and thereafter entered into commercial life, first as book-keeper, and then as one of California's earliest commercial travellers. In 1882 he began the study of law and was admitted to the Supreme Court of this State on August 5th, 1885. Since that time he has been engaged in much of the most important litigation before our courts, both State and Federal; and in this connection, it is most apparent that Mr. Levinsky has never followed well-beaten tracks, but rather, has opened up many new legal avenues in his practice, varied as it is, including commercial, criminal, probate and corporation law, in all of which he has been most successful.

Mr. Levinsky was the first attorney in our State who obtained a decision of our Supreme Court declaring the difference between an "elector" and a "voter," which remained undetermined for many years, until the proposition was argued by him, and which has been a much-quoted decision since that time.

He for many years was a member of the well-known law firm of Louttit, Woods & Levinsky, and since January, 1894, has been one of the members of the firm of Woods & Levinsky, who are the legal representatives of many of the largest interests in this State, including the Alameda & San Joaquin Railroad Company, the Sierra Railroad Company of California, the California Navigation and Improvement Company, P. A. Buell & Company, Stockton Electric Railroad Company, the Standard Electric Company of California, the Stockton Savings Bank, the Santa Fe Pacific Railway Company, and many other large local interests in San Joaquin county; and he is also the local representative of Carter, Hughes & Dwight, of New York City.

His business is not confined solely to the county of San Joaquin, but extends throughout the entire State. He is courageous, faithful and zealous in behalf of his clients at all times, though always conceding to his opponents their just dues. It is well known that when he undertakes a case or represents any

interest, large or small, so long as his client's demand is just, he can be found standing by his client to the end of litigation, whether his client is possessed of means or not, strict attention to business and tenacity of purpose being his motto.

While he has had many opportunities, politically speaking, with the exception of having been city attorney of the city of Stockton, he has never allowed his name to be used for office, though his voice is often heard in the furtherance of the principles of the Republican party, and he is well and most favorably known throughout California.

Of Mr. Levinsky it may well be said that he holds a high place in the respect of his fellow citizens as a worthy adviser and counsellor at law, and as a strictly honorable, public-spirited citizen whose efforts and ability can always be depended upon for the promotion of the best interests of San Joaquin county, and California in general.

Bradner W. Lee

BRADNER W. LEE.

Bradner Wells Lee is a native of Livingston county, New York. He was born May 4, 1850. His father was David Richard Lee, and his mother was Elizabeth Northrum Wells. He is descended through his father from Nathaniel Lee, who settled at Fishkill, New York, in 1725, whose eldest son, Thomas, was a distinguished officer in the Revolutionary War, the latter's sons being commissioned officers in the War of 1812. Through his mother, Mr. Lee comes from Hugh Welles, who was one of the first settlers of Hartford, Connecticut.

When Hon. G. Wiley Wells, recently of Los Angeles, was United States attorney for the northern district of Mississippi, Mr. Lee, who is that gentleman's nephew, began the study of law in his office, in 1871. He came to California and, settled at Los Angeles, in 1879, and was admitted to the bar by the Supreme Court of this State. He became a partner of ex-Judge Brunson and of his uncle just mentioned, under the firm name of Brunson, Wells & Lee. When Judge Brunson retired, Walter Van Dyke, now Associate Justice of the Supreme Court, took his place, the firm being Wells, Van Dyke & Lee. In 1896 he became associated with Hon. John D. Works, under the name of Works & Lee. This firm, which still exists, has been a leading one and very prosperous ever since its formation.

The firm has in its office the well-selected library of Colonel G. W. Wells, of over 6,000 volumes. Mr. Lee, who has come to be an experienced lawyer in all kinds of cases, is devoted to his profession. If he has had any specialties, they have been in the line of probate and corporation law.

He has never held office, but, in 1896, in 1898, and again in 1900, was chairman of the Republican county committee. He was elected by the legislature in 1897 one of the trustees of the State Library. He has belonged to the Los Angeles Chamber of Commerce since 1894, and a member of the law committee of that body. He is director and treasurer of the California Society of the Sons of the Revolution, a charter member, and now historian, of the Society of Colonial Wars in the State of California, and vice-commander of the California Commandery of the Military Order of Foreign Wars of the United States; also, a member of the Jonathan Club, and of the Mystic Shrine.

Mr. Lee married Miss Helena Farrar at Philadelphia in 1883. Her father, now deceased, was Colonel William Humphrey Farrar, of Washington, D. C., a prominent lawyer of his time, who studied law with Daniel Webster and Caleb Cushing. They have two children, Bradner Wells Lee, Jr., and Kenyon Farrar Lee.

Mr. Lee was urged by many of the prominent attorneys at Los Angeles to accept the nomination for Superior Judge at the campaign of 1900, but declined, preferring his private practice to a place on the bench.

T. L. LEWIS.

Hon. T. L. Lewis, district attorney of San Diego county, was born on a small farm in Crawford county, Pennsylvania. When he was about two years of age his parents emigrated to the then new State of Illinois and settled in McHenry county, about sixty miles northwest of Chicago. His father was a farmer, and the son spent the earlier years of his life and until twenty-one on a farm. In 1863 his parents removed from Illinois to Iowa, making the trip across the country in covered wagons, and settled in Jasper county. Again, in 1869, they moved westward and located in Richardson county, Nebraska, on a farm. During the earlier years of his life our subject worked steadily on the home farm, attending the common public schools in winter for a period of three months each year. Upon reaching his majority, he was fortunate enough to secure a position as teacher of a common school in Nebraska near the home of his parents. After teaching a single term of three months, in 1872, he entered the Nebraska State Normal School, then and now located at Peru. He had no means with which to pay his expenses at school, except what he earned by working in the harvest fields during vacations, and teaching in the public schools when his funds gave out. In this manner he finished a three years' course at the Normal School of Nebraska, graduating from that institution in June, 1877. The following year he taught in the public schools of Nebraska, but concluding not to follow teaching as a profession, he, in the fall of 1878, entered the law department of the Iowa State University at Iowa City. From that institution he was graduated in June, 1879. After receiving his diploma and being admitted to practice in the Supreme Court of Iowa and in the Federal Courts, he returned to Nebraska. On reaching Omaha in July, 1879, he found his finances reduced to the sum of seventy-five cents, and this, with his personal effects, constituted his entire property. In order to replenish his purse he spent six weeks in working at manual labor in the harvest fields. In the fall of that year, 1879, he secured employment as a teacher in a village school in Douglas county, Nebraska. After teaching for one year, he, in October, 1880, formed a law partnership with W. E. Drury at Decatur, in Burt county, Nebraska. About one year later he removed to Oakland, in the same county, where he formed a partnership for the practice of his profession with Watson Parrish. In the latter part of 1885 the partnership with Mr. Parrish was dissolved by mutual consent, Mr. Parrish removing from the State of Nebraska, and Mr. Lewis continued the practice of law at Oakland until January, 1888.

While engaged in the practice of his profession at the last named place Mr. Lewis was, at the general State election of 1884, elected to represent Burt and Washington counties in the Nebraska State Senate. In 1886 he was elected prosecuting attorney of Burt county, Nebraska, for a term of two years, but after serving one year he resigned the office and removed to California, and settled

in San Diego, where he has ever since resided. Upon locating in San Diego in January, 1888, he at once entered upon the practice of the law, and has continued in active practice continuously since. He has served as deputy district attorney of San Diego county for a term of two years, and as deputy city attorney for the city of San Diego for a term of four years.

At the general election in 1898 Mr. Lewis was elected district attorney of San Diego county for a term of four years, which office he is now holding. In his politics he has always been a Republican.

On January 21st, 1886, he was married to Miss Mary Fullen, of Tekama, Burt county, Nebraska, and he has three children. He is domestic in his habits, and spends much of his time out of office hours with his family.

MAX LOEWENTHAL.

Max Loewenthal was born October 15, 1858, at Inowrazlav, Germany. He came to California in 1868, and received his early education in the public schools of Sacramento. He was graduated from the University of California, with the degree of A. B., in 1881; and from Hastings' College of the Law in 1884. He was admitted to the bar in 1884, and practiced for two years in San Francisco. He located at Los Angeles in 1886, and has always practiced there.

Mr. Loewenthal's father and grandfather were rabbis of the Jewish church. His father was for eleven years at Sacramento in charge of the Jewish congregation, and the same period of time at San Jose.

Mr. Loewenthal was married at Los Angeles in 1890, to Miss Laura Meyer, daughter of one of the oldest and most respected business men of that city. His family now consist of his wife and one child, a boy of nine years, named Paul.

Mr. Loewenthal's practice has been of a general civil and corporation character. In 1890, when Mr. Loewenthal had been in practice in Los Angeles but a few years, he was nominated for Superior Judge by the Democrats and suffered defeat with the rest of his ticket. He is not a politician in any real sense, though he takes an active interest in affairs of state.

EDWARD MARTIN.

Mr. Martin is one of the highest-credited citizens of the most beautiful and resourceful county of Santa Cruz. He was born in England, his father being Dr. John Martin. He came to California in 1851. A picturesque incident of his life-record is his plowing the first furrow in the rich Pajaro valley. Afterwards he had a bookstore and stationery business in Watsonville, and held the offices of notary public and postmaster. He there acquired a home and was united in marriage to Miss Emmeline Risdon, of New York. He has been living in Santa Cruz city since 1884, when he entered upon the office of county clerk, auditor and recorder. He held this by successive re-elections, until January 1, 1899. He had been admitted to the bar by the Supreme Court in September, 1898, and began the practice of law on leaving official life. He holds, by the appointment of United States District Judge DeHaven, the position of referee in bankruptcy.

Mr. Martin was a member of the last constitutional convention, 1878.

Mr. Martin is well versed in Latin, French and Spanish, and has written considerably in the line of historical sketches and humorous stories, some of which are preserved in the "History of Santa Cruz County," by E. S. Harrison (1892).

Mr. and Mrs. Martin have a fine home on Camino del Rey, Santa Cruz. Their children are grown up—two sons and a daughter.

C. C. McCOMAS.

Charles Carroll McComas, the veteran public prosecutor of Los Angeles county, was born on his father's farm in Jasper county, Illinois, August 10, 1846. His parents died when he was a child. He was living in Decatur, Illinois, supporting himself by work, when the Civil War opened, in 1861. In the following year he enlisted in the One Hundred and Fifteenth Illinois Volunteer Infantry when he was not quite sixteen years old, and was mustered in as a corporal in Company F. He served to the close of the war, taking part in all of the many battles in which his regiment

fought. His gallantry in action constantly attracted attention. After the battle of Resaca, in Northern Georgia, he was promoted to first sergeant, and later to first lieutenant. At Chickamauga he was in the hard fighting on Snodgrass Hill. Out of every hundred soldiers on that field the killed and wounded numbered forty-nine. He was himself struck by a minnie ball, and his life was saved by a piece of a dictionary which he had in his pocket.

When the war was over the young soldier, then only nineteen, went to his home town, Decatur, and engaged in practice, at the same time pursuing the study of law. His reading was done at night. Afterwards he attended a course of law lectures at the University of Michigan. He had won the close friendship of Colonel Jessse H. Moore, the commander of his regiment, and now Colonel Moore secured for him a confidential position in the office of Hugh Crea, a prominent lawyer, and under the latter's supervision he finished his law studies. He was admitted to the bar in 1869, and began practice at Decatur. In 1870 he was elected state's attorney for four years. In November, 1870, he married a daughter of Colonel Moore, who himself performed the marriage ceremony, being a minister of the Gospel. Colonel Moore, it may be added here, was also for years a member of congress from the Seventh Illinois district. Mr. McComas, at the end of his term as state's attorney, moved with his family to Larned, Kansas. He was Probate Judge of the county during the greater part of his residence there, but the condition of Kansas grew so destitute that he removed to New Mexico. Locating at Albuquerque, he was soon appointed prosecuting attorney for the Second Judicial district. He also served in the council, the upper house of the legislature, and was the author of a number of bills, which are still on the books of that territory, among them being the public school law.

In the fall of 1886 Judge McComas came to California, and settled permanently at Los Angeles, engaging in the practice of law. In 1889 he was appointed deputy district attorney of Los Angeles county. This position he still holds, having occupied it under every subsequent Republican district attorney, and there has been only one Democratic district attorney during that period.

As a public prosecutor, Judge McComas is distinguished for skill and general proficiency. The *Times* of Los Angeles has declared him to be the ablest that the county has had. According to the *Express*, in November, 1899, he has convicted more criminals during his long service than any other officer on the Pacific Coast in a like period of time. He has been the subject of several public biographies, and is represented as being untiring in his efforts to bring to justice violators of the law. "Some of the cases brought before him," says one writer, "were as complicated and intricate as any ever presented to an official, but he proved himself fully equal to coping with them. * * Believing that a public office is a public trust, he has devoted himself, in the various offices held by him, to the faithful discharge of his duties, and his work has been successful. His record is one of which he and his many friends may well be proud."

The Judge's family consists of his wife and three children, the later being Miss Alice Beach McComas, Mrs. Clare McComas Harris, and Miss Carroll McComas. Miss Alice is one of the most accomplished of pianistes. Mrs. Harris is a fine vocalist. Miss Carroll is a successful vaudeville star, and a whistler of wonderful powers. She has been offered a flattering London engagement for the present year.

A. M. McCOY.

Mr. McCoy was born in Clark county, Missouri, on June 9, 1852. He was one of six brothers, and was the son of Joseph McCoy, who was well and favorably known not only in Missouri, but also in other States. He was educated principally at Pleasant Hill Academy in his native county, and La Grange College and Christian University, in Lewis

county. He graduated from the last named institution in 1874 with the degree of A. B., and was accorded the honor of valedictorian of his class. He studied for one year as a post graduate in his alma mater, and then taught for one year the department of English Literature and history. He afterwards received the degree of master of arts from the same school.

In 1874 Mr. McCoy came to California and located at Red Bluff, which has continued to be his home. He taught for two years at this place, being the principal of the public schools. In the spring of 1878 he found his health very much impaired, and on this account he embarked in the sheep business and spent a few years in the mountains and foothills. Regaining his health he commenced the study of law among the tall pines and in the free air of the Sierras, and afterwards, continued the same in the office of Jackson Hatch, who was then at Red Bluff.

He was admitted to practice as an attorney in the spring of 1886, and he was in the fall of that year elected as district attorney of the county of Tehama. He was re-elected to the same office for two successive terms, each time by an increased majority. Retiring from this office in 1893, he has devoted himself very industriously to general practice. He has been very successful in his profession and has often been called to other counties to take charge of important litigation.

He has always been a staunch Democrat in

politics and has taken a prominent part for his party in campaigns, being an earnest supporter of William J. Bryan and the principles of which he is pre-eminently the exponent.

Mr. McCoy was married in 1884 to Miss Hattie Muth. This union has been blessed with three bright children. He is the owner of one of the most comfortable homes in Red Bluff. He is a Mason and Odd Fellow, and he is also a zealous and prominent member of the Christian church. He holds a very high place in the good will of the community where he has lived so long.

J. WADE McDONALD.

J. Wade McDonald, of San Diego, has long occupied a leading place at the bar of the State. He is a native of Ohio, and as a boy of sixteen served in the Union Army during the Civil War until disabled by wounds. At the close of the war he settled at Huntsville, Alabama, and studied law under General L. P. Walker, who was the first secretary of war of the Confederate States.

He took an active part in politics in Alabama, as a Republican; was assistant secretary of the Alabama senate, and Quarter-master

General on the staff of William H. Smith, the first Republican Governor; and by his ability as an organizer and stump-speaker contributed very largely to the carrying of the State for General Grant in 1868.

He moved to Kansas in 1872, and in that year followed Horace Greeley into the Democratic party. While residing in Kansas he served one term on the bench and one term as prosecuting attorney. He was the Democratic candidate for Congress in the third district of Kansas in 1880, and declined the same party's nomination for Governor in 1886.

Judge McDonald came to California and settled in San Diego in May, 1887, when about 40 years of age. At once he took rank among the ablest lawyers. He is a most fascinating and eloquent orator. The cases of *San Diego Land and Town Company vs. Neale*, 78 Cal. 63; *Cowden vs. Pacific Coast Steamship Co.*, 94 Cal. 470; *Consolidated National Bank vs. Pacific Coast Steamship Co.*, 95 Cal. 1; *Story and Isham Co. vs. Story*, 100 Cal. 30-41; *Burnham vs. Stone*, 101 Cal. 364; *City of San Diego vs. Higgins*, 115 Cal. 170; *Thomas vs. Pacific Beach Co.*, 115 Cal. 136, and *People vs. Jones*, 123 Cal. 299, all settle new and important questions of principle and practice and were all personally briefed for the winning parties by Judge McDonald. They are shining trophies of his legal "bow and spear."

When the national Democratic convention in 1896 assailed President Cleveland for stopping the Chicago riot and arraigned the United States Courts for interposing the process of injunction as a protection to life, property and the public peace, Judge McDonald went back to the Republican party, and in 1898 made a vigorous campaign in support of the State ticket. His work was mainly in San Francisco, and its character and effect are shown by the following extract which we have been permitted to make from a letter addressed him by the chairman of the Republican State central committee, under date of November 12th, 1898, to-wit:

"Hon. J. Wade McDonald, San Diego, Cal.:—

"My Dear Sir: I desire to assure you of my sincere appreciation of the eminent services rendered by you in the past campaign, services from which sprung the most magnificent victory ever achieved in the history of California politics.

"On behalf of this committee, therefore, I desire to gratefully acknowledge the beneficent results due to your oratorical ability, and the unanswerable arguments you presented, in favor of principle and patriotism, all of which has enabled us to accomplish our glorious victory."

Judge McDonald is the original "Prophet of Expansion," having been the first man in the United States to declare for it, from a public rostrum upon a notable occasion. He was the orator at the "Memorial Day" exercises held at San Diego on the 30th of May, 1898, and in the course of his speech, said: "I believe that I voice the sentiment of every old soldier, Union or Confederate, within the limits of the United States today, and I believe also of the great mass of patriotic citizens of our country, when I say that since we have been forced to war, since we have been compelled to offer upon the shrine of the mistaken pride of Spain the lifeblood and treasure of our country, not one foot of the soil that we take from her by armed force during this war shall ever be returned. No! That which we take with the strong hand of war we will retain; and we shall not ask permission from czar, kaiser or potentate to do so."

And in his campaign for the Republican ticket in 1898 he eschewed personal and State politics entirely, and made his appeal to the people exclusively upon the grounds of national expansion.

J. P. McELROY.

James P. McElroy was born at St. Johns, New Brunswick, August 30, 1835, the son of Edward and Rose (McKenna) McElroy, both of Irish descent. James was educated at Morrisville, Vermont. He studied law in the office of Thomas Gleed, of that place, for three years, and was admitted to the bar in 1858. He practiced law until 1862, when he enlisted in the Ninth Regiment, Vermont Volunteers. He served three years, being mustered out at the close of the war, in 1865. He then resumed his law practice in Vermont, and followed it until 1872. Believing that in the West he would find a broader field for the exercise of his talents, he settled in Chicago, where he practiced his profession with success. In 1887, on account of his health, he came to Oakland, Cal., where he built up a good and growing practice. He was a member of the G. A. R. since its organization. In 1896 he was colonel of the Army and Navy League of Alameda county, and lieutenant-colonel of the State Army and Navy League.

In the war, his command operated for a considerable time in the Shenandoah Valley, under General Pope. From there it went to North Carolina, where it was under General Butler. It finally brought up in front of Richmond, and took part in the surrender there. He was in many hotly contested actions, beginning with Winchester and Harper's Ferry. After crossing the James River it was almost continuous fighting from September until the following April, 1865, when Richmond fell.

In 1862 Mr. McElroy was married to Miss Amy Carpenter, a daughter of Josiah Carpenter, of Waterville, Vermont. His wife is of old Puritan stock, the founder of the family having, it is believed, come over in the Mayflower. Mrs. McElroy is a cousin of the late Senator Matt Carpenter, of Wisconsin, and of State Senator Richard B. Carpenter, a prominent citizen of Los Angeles. Two children blessed their union, Edward J., and Charles B. The latter died in 1886 in Chicago. James P. McElroy died very suddenly of heart trouble at his residence in Piedmont, August 8th, 1900, aged sixty-four years and eleven months. Mrs. McElroy is residing in San Francisco.

FRANK McGOWAN.

Frank McGowan was born at Steilacoom, Washington, in 1860. He studied law in Humboldt county, and was admitted to the bar of the Supreme Court in 1883. He practiced law at Eureka for some thirteen years. In the presidential campaigns of 1880 and 1884, Mr. McGowan became noted as a public speaker on the Republican side, and since has been active in national and State campaigns. He is a brilliant and magnetic speaker. He served two terms in the senate, from January, 1889, to March, 1897, representing Humboldt and Del Norte counties. He removed to San Francisco in 1896, and has since been in good practice there. He was nominated presidential elector by the Republican state convention at Santa Cruz in September, 1900, and was elected to this honorable place.

Mr. McGowan was united in marriage to Lena Blum on the 28th day of September, 1889, and has two children.

E. W. McGRAW.

Edward Walker McGraw was born in Detroit, Michigan, on September 4, 1837. His father was a native of Orange county, New York, and was born in 1809, but moved to Michigan, then in the very far West, in 1830. His mother was born in Providence, Rhode Island. His ancestors on the father's side lived in the north of Ireland, county Armagh. On the mother's side they were Puritans and Quakers of New England.

Mr. McGraw was graduated from the University of Michigan with the degree of A. B. in 1859. He received the degree of A. M. in 1862. In the fall of 1859 he attended the Albany Law School, and in 1860 the law school of the University of Michigan. He was admitted to the bar in Detroit, Michigan, in October, 1860, and immediately started for Portland, Oregon, via the Panama route. Arriving in Portland in December, 1860, he practiced law there until November 1st, 1864. Mr. McGraw was United States district attorney for Oregon in 1862-4, and city attorney of Portland, 1863-64. In November, 1864, he went to Honolulu, and spent the winter of 1864-5. In April, 1865, he went to San Francisco, and thence on horseback to Idaho, arriving at Idaho City in June, 1865. He practiced law there until May, 1867. Taking horse again he proceeded to Fort Benton, thence down the Missouri by steamer to St. Louis, arriving there in September, 1867. He spent a couple of months in the East, and, in December, started from New York for San Francisco via Nicaragua, arriving at San Francisco on January 1st, 1868. He now ended his travels, and has ever since been practicing law in San Francisco.

He married on June 4, 1869, Miss Sarah Ellen Tichenor, of Port Orford, Oregon, and has had thirteen children, nine of whom are living.

JAMES McLACHLAN.

Hon. James McLachlan, a member of the national house of representatives from the Sixth district of California, was born in Scotland in 1852. His parents brought him with them to the United States three years later, and settled in Tompkins county, New York, engaging in farming. The son was raised on the farm, and attended the district school, the while preparing himself for college. He was graduated from Hamilton College in 1878, studied law, and in 1880 was admitted to the bar of the Supreme Court of New York. In 1881 he located at Ithaca, New York, where he practiced law until 1888. In the latter year he came to California, and settled at Pasadena, in Los Angeles county. In 1890 he was elected district attorney of that county, on the Republican ticket. In this connection he is referred to in the sketch of his friend, Superior Judge York, who at that time became his assistant. In November, 1894, he was elected, as a Republican, a representative in the Fifty-fourth congress, and served the term from March, 1895, to March, 1897. Mr. McLachlan, as well as Senator White, did able and effective work to secure for Southern California an appropriation for San Pedro harbor, which was so stubbornly contested by various financial corporations with interests elsewhere.

Since 1897 Mr. McLachlan has been following his profession in Los Angeles city. He was returned to congress in 1900 for the two years' term, beginning March 4, 1901, by a great majority.

Mr. McLachlan is married and has several children. He owns his home in Pasadena, and is in good circumstances. He has belonged to the Los Angeles Chamber of Commerce since 1891, and is in hearty sympathy with the public spirit of that wide-awake and progressive institution.

ROBERT L. McKEE.

Mr. McKee was born in Panola, Panola county, Mississippi. He came to Oakland, California, in the early fifties, as a child. He went to public and private schools in Oakland until he entered the College of California, which afterward became merged into the University of California. He was graduated from the University of California in the first class that ever graduated from that university. Shortly thereafter he went to the University of Virginia, to study law, remaining one year. He received a certificate of proficiency June 29th, 1871. Returning to Oakland he went into a law office in San Francisco. He afterwards served as deputy county clerk in the City and County of San Francisco under the late Colonel William Harney. After remaining there a year and more he resigned, was admitted to the bar by the District Court of the Twelfth Judicial District, and proceeded to practice in Oakland. He was admitted to the bar of the Supreme Court of California in 1875. While practicing in Oakland he served as deputy district attorney for Alameda county and afterwards as court commissioner.

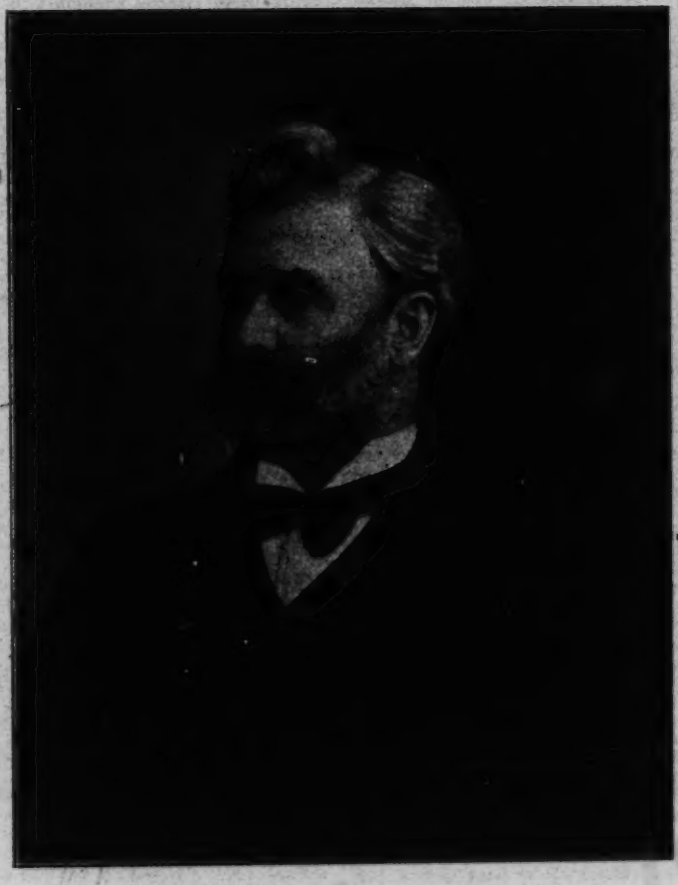
He went to Oregon in 1882, and practiced law in Portland, being associted with the late Judge Shattuck. While there he was nominated for Circuit Judge for the county of Multnomah, unknown to himself; but after being notified he had to decline the honor, as he had not been in the state a sufficient length of time to be eligible to the office. After a few years he returned to Oakland, where he is practicing at present.

Mr. McKee is a Democrat. He ran for office but once; it was for district attorney for Alameda county, and, as was to be expected, the whole ticket was defeated. He has taken the stump for his party on many occasions as well as for his friends in different counties, both in this State and Oregon.

THOMAS. McNULTA.

Thomas McNulta was born October 8, 1845, of Scotch-Irish ancestors. His father, who was born and reared in the city of Dublin, Ireland, was the son of Scotch parents, and was for a time a student of Trinity College, Dublin, but did not graduate, and came to this country when twenty years of age. His father, the grandfather of our subject, was an engineer officer who resigned from the army and settled in Dublin, and followed the business of an engineer and architect.

The father of Thomas McNulta, on coming to the United States, settled first in New York city, and subsequently in New Rochelle, in that State, where the son was born. Many of the bridges on the New York & New Haven railroad and a portion of Fort Schuyler, in that county, as well as numerous houses and buildings, were constructed under the supervision of the father, who followed the business of contractor and builder, in which the engineering and architectural skill acquired from his own father was so successfully applied that he realized two fortunes from his efforts, one of which he lost by disasters, especially by fire, and the payment of security debts, and the other by the financial stress of the times in the fifties. He was an ardent lover of the United States and widely read in its history, and this love for the country he instilled into the minds of his children from their earliest infancy. His faith was tested later, and though an old man, he served for one campaign in the war for the Union, and took part in the battle of Bristow Station and some minor affairs. His three sons, John, Benjamin F., and Thomas, served in the same cause, the eldest being the late Gen. John McNulta, of Chicago, Ill., who died in the city of Washington, on February 22nd, 1900. Benjamin F. died many years ago from wounds received while serving in the navy. Thomas McNulta was



Thomas McNulta

being prepared for Columbia College at the outbreak of the war, and being affected with the war fever like many a youth of the time, he enlisted on November 21st, 1861, and served as a private in two different regiments, the D'Epineuil Zouaves and the Anderson Zouaves, and finally, in 1864-5, as captain of a company of Tennessee Union militia, organized at Nashville from employes of the quartermaster's department at that place. During his service he was twice wounded slightly, and had his right leg broken at the ankle joint by a fall from a horse. In all, he participated or was under fire in seventeen engagements.

The mother of Mr. McNulta was born in Invernesshire, Scotland, of French ancestry. Her ancestors came from near La Rochelle and her maiden name was Catherine Charberay. Her grandfather was chief of battalion in the French army, and belonged to a collateral branch of the Lannes family. In addition to what has been said about the father's family it may be stated that a great uncle of Mr. McNulta served as an officer with Sir John Moore, whose burial has been commemorated by the well known poem on the subject. This uncle subsequently married and settled in Spain, and all further trace of that branch of the family has been lost.

The name McNulta, in its various forms of spelling, has been shown to have existed in the time of Macbeth, in whose household some of them lived. Mr. McNulta declares that Macbeth, by the way, did not murder Duncan but killed him in the open field in fair fight.

Our subject studied law in the office of Weldon & McNulta at Bloomington, Ill., and was admitted to the Supreme Court of that State at the age of twenty-three years. He was associated with his brother, General McNulta, for several years at Bloomington, as attorney for the I. B. & W. Railway Co., and in other legal business. He settled at Santa Barbara, Cal., in 1873. After a year spent in reportorial and editorial work on the press, he renewed the practice of the law and has followed it continuously ever since.

Mr. McNulta was district attorney of Santa Barbara county for one term by election, and for one term was assistant district attorney by appointment of his then partner, A. A. Oglesby. He was for eighteen years city attorney of the city of Santa Barbara and managed for that municipality some notable cases, one of which involved the Haley survey, and the proper adjustment of street lines (see Orena vs. The City of Santa Barbara, 91 Cal., 621). Another involved the title to the city hall, and the plaza on which it stands. All of this business he attended to alone except the city hall case, in which he was ably assisted by Jarrett T. Richards, an accomplished member of the local bar, who was himself at one time city attorney and also mayor of the city. Mr. McNulta's practice has been of a varied character, but mostly civil, and some of it important. He was the first attorney employed by the late A. P. More in the case reported in the 71st Cal., page 546, in which it was decided for the first time that no appeal lies on behalf of the people from an order made by the Superior Court of its own motion under section 1385 of the penal code dismissing a criminal action. This case became well known throughout the State from the fact that the defendant was an old and prominent resident, and also because of a novel question of jurisdiction which was raised in it, but never was decided on the facts upon which the question was based.

At the last election Mr. McNulta declined to be a candidate for city attorney, but is now retained as associate counsel for the city in some important cases, one of which is that of the Montecito Valley Water Co. vs. The City of Santa Barbara et al. This action involves riparian rights, the rights of owners of land to tunnel thereon for water, and some questions as to the right of a private corporation to obtain water by prescription.

Mr. McNulta is, as the expression goes, an "all round practitioner." His specialties, if he has any, are land titles and corporation laws.

VICTOR H. METCALF.

Hon. Victor Howard Metcalf, representative in congress from the Third district, comprising the counties of Alameda, Contra Costa, Solano, Yolo, Lake, Glenn and Colusa, was born in Utica, New York, October 10, 1853. He is a graduate of Utica Free Academy and Russell's Military Academy, New Haven, Connecticut. He entered Yale College, academical department, leaving it in his junior year to attend the Yale Law School, from which he was graduated in 1876. During college vacations he had studied law in the office of United States Senator Francis Kernan, at Utica, and in the offices of Horatio Seymour and John F. Seymour, in the same city. He was admitted to practice by the Supreme Court of Connecticut in June, 1876, and by the Supreme Court of New York, in 1877. He followed the practice in Utica for two years. Coming to California in 1879, and locating in Oakland, he has ever since been one of the strongest men at that bar, having throughout this period of twenty years important legal business in San Francisco and other cities. He possesses exceptional vigor of mind and body, untiring energy and broad legal knowledge. He is always practical in his methods, clear in his perceptions and has a full measure of what Pope styled "good sense, which only is the gift of heaven." He follows his profession with the most industrious and serious devotion, and has prospered to a degree that comparatively few have attained anywhere.

In 1881 Mr. Metcalf formed a law partnership with Mr. George D. Metcalf, who is also a Yale graduate, under the firm name of Metcalf & Metcalf, which still continues. The gentlemen are not brothers, and, we believe, are not related.

Mr. Victor Metcalf was first elected to congress in November, 1898, and again in November, 1900. His present term will expire on March 3, 1903. In his high office, as in his profession, he has been earnest and constant—

steadily accomplishing good work. His watchful zeal and efficient service have fulfilled the prediction of those who knew him best.

HENRY EDMUND MILLS.

Henry E. Mills was born in Montrose, Susquehanna county Pa., June 24th, 1850. His paternal ancestor, Samuel Mills, was born in Dedham precinct, now Needham, Mass., in 1622. His grandfather, Josiah Mills, was in the War of the Revolution, first at the age of 16 years as a drummer, and afterwards as a soldier, and was in the battles of White Plains, Saratoga, Trenton and Yorktown. His mother, whose maiden name was Halsey, was a descendant of Thomas Halsey, who settled at Lynn, Mass., prior to 1635.

Mr. Mills was educated at Shurtleff College, Upper Alton, Ill., and was graduated in 1869. He taught a country school for one year and then commenced the study of law at the St. Louis Law School, where he was graduated in 1872 with the honors of his class. He was married on August 30, 1877, to Emma B. Sprague. Five children have been born of the marriage.

Mr. Mills has never sought political office, and, outside of one term as alderman, has never held an office. He is the author of a treatise on the law of eminent domain which was published in 1878, and was favorably received by the profession. A second and revised edition was published in 1888. Mr. Mills practiced in St. Louis, Mo., from 1871 until 1896, when he removed to San Diego. In addition to his professional studies, he has frequently contributed to the law reviews and the periodicals on constitutional and economic subjects.

R. B. MITCHELL.

Robert Brent Mitchell was born in Frederick county, Maryland, September 11, 1853. He was educated at Princeton College, but left in the junior year. He is a graduate of the law school of the University of Maryland, and was admitted to the bar at Baltimore, in June, 1874, before he was quite of lawful age. He is of American parentage, his father being a farmer and gentleman of leisure.

Mr. Mitchell located in San Francisco in October, 1883. After practicing alone for three years, he formed a partnership with A. H. Ricketts, under the firm name of Mitchell & Ricketts. This lasted only a year, and Mr. Mitchell was alone in the practice until the opening of 1889, when he and Henry C. McPike became partners under the style of Mitchell & McPike. This also lasted but a year.

Mr. Mitchell, during most of the period thus far gone over, was the resident director of the United States Law Association of New York. He began his long association with Hon. William M. Pierson, in 1890, under the name of Pierson & Mitchell. This was dissolved in 1899, the parties continuing to occupy adjoining offices.

Mr. Mitchell has, during nearly his whole period at the San Francisco bar, been one of the most prominent and successful practitioners, and is still in the full tide of prosperity. It will be a good while yet before he is fifty years old. He has unusual natural force, somewhat striking appearance, and is as faithfully devoted to his profession as he is, by nature and training, adapted to it. He is a cultivated and polished man. It is not to be left unsaid that he tries his cases in a masterly way, being apt, ready, and resourceful, while his arguments and addresses are clear, strong, and logical, delivered with the most pleasing voice and manner. His ready ability and unembarrassed demeanor were most signally exhibited at many times during the progress of the great Fair case through the courts of late years.

Mr. Mitchell is a Democrat, but believes in the gold standard, and left his party, for a time at least, on this question in 1896. He has no political ambition. He said to us in 1894, "I have never held an office, and never will."

CYRUS F. McNUTT.

When Judge McNutt came to California and settled at Los Angeles, in December, 1896, he was a lawyer of ripe mind, and large experience. He was born on a farm in Indiana, July 29, 1837. At the age of nineteen, he entered Franklin College with the intention of pursuing its full course of studies, but before the end of his third term the death of his father compelled him to return home and conduct the farm. He left the farm in 1859, and spent the following winter as a student in the law department of the Northwestern Christian University. In the summer of 1860 he was admitted to the bar at Franklin, Indiana, and began practice there in partnership with ex-Judge David D. Banta, who afterwards became dean of the faculty of law in the Indiana State University. After some months he formed a partnership with ex-Attorney General Thomas W. Woolen, of Franklin. In May, 1862, he removed to Martinsville, Indiana, and practiced in partnership

Cyrus F. McNutt.

with Alfred Ennis Esq., now prominent at the bar of Chicago. He had great success at that place.

In 1872 Judge McNutt ran for congress in the Indianapolis district, on the Democratic ticket, and was defeated by General John Coburn, who was then representing the district. He made a joint canvass with General Coburn, and showed himself an orator of high powers as well as a skilled debater. In June, 1874, the trustees of the state university elected him a professor of law. It took him by surprise, but he accepted, and entered on his duties on the following October. After two years and three months' service he resigned. In October, 1877, he removed to Terre Haute, where he resided until he left Indiana for California. There he acquired a large practice. Besides, he became the legal adviser and attorney of the board of county commissioners, which had in hand the building of a new courthouse and other public works, and served in that capacity for eight years.

In 1890 our subject was elected Judge of the Superior Court of the county, of which Terre Haute is the county seat, and served the term of four years. He declined a renomination.

In 1895 appeared the large work, by Charles W. Taylor, entitled, "Biographical Sketches and Review of the Bench and Bar of Indiana." It contains an elaborate notice of Judge McNutt, as lawyer, judge, literary writer, and lecturer. The article is decidedly interesting, and written with much grace of style. It is by Judge John C. Robinson, of the Indiana bar, a man of fine critical powers and general ability. He lived at Spencer, and in the sixties was prosecuting attorney for the judicial district composed of Green, Clay, Owen and Putnam counties. In the seventies he was Judge of the Circuit Court of that district. From his entertaining notice of Judge McNutt we extract the following:

"Judge McNutt has always possessed and merited the confidence of the bar and the public in his character as a wise and learned counselor. His grasp of legal propositions is quick and strong, and his vision is true and far-reaching. Had he remained always in his office as a legal adviser, he would have won a high reputation in his profession, but his more attractive attributes as an advocate and trial lawyer, have served to make him even more conspicuous as a barrister than as counselor. He has had employment in a large proportion of all the great cases, civil and criminal, that have come to trial in the western portion of Indiana during the last thirty years, generally as the leader on one side or the other, and has met all the great lawyers and advocates who have been called to that field. His chief characteristics as a trial lawyer, are alertness and boldness, amounting almost to seeming recklessness, and which would be so, indeed, could the adversary find time to cease defense long enough to strike back (this, however, is not permitted him, and the end generally demonstrates that dash and courage were the wisest caution).

"Judge McNutt brought to the bench such qualifications as insured an able and just administration of its duties, a quick conscience, courage, adequate learning and experience, practical business capacity, untiring industry, and a thorough comprehension of the fact that the real object of judicial investigation is to administer justice. His administration was in all respects efficient and successful, and especially satisfactory to lawyers and litigants.

"For several years Judge McNutt has indulged his taste for literature, not only in the close study of its best models, but, to some extent, as a contributor to its stores. He has written a considerable number of short stories, published by a syndicate of newspapers of wide circulation. He has also written several more pretentious works of fiction, some of which are not yet published. * * *

"He has also given a great deal of study and labor in preparing for the work of the platform, and has met with most flattering success in that field. * * * One of his lectures, "The Trial of Jesus," is entitled to be considered as something more than material for an evening's entertainment. It is a masterful piece of literary excellence, and embodying, as it does, years of investigation, is a most valuable contribution to the study of the great theme."

Judge McNutt is himself the author of several biographical notices in the work from which we have quoted. The sketches of ex-Secretary of the Navy Richard W. Thompson, Judge B. E. Rhoads, and Judge David [illegible] Taylor, are from his pen.

Since Judge McNutt located at Los Angeles he has maintained the same high standing at the bar, and enjoyed the same general esteem which were his in Indiana. In November, 1897, he formed a law partnership with Colonel Geo. H. Smith and Mr. J. E. Hannon, which still continues, under the firm name of McNutt & Hannon, Colonel Smith having been appointed a commissioner of the Supreme Court of California. The firm of McNutt & Hannon is one of the strongest in the State, and, although it was only recently formed, is fully occupied with business of first importance. Judge McNutt is an unassuming man, but his arguments in court during his comparatively brief residence in California, presented in his quiet, yet earnest and engaging way, have been the subject of comment by our best legal minds, and the profession, at least in the southern part of the State, looks upon him as one of its very ablest exponents.

Judge McNutt has two sons, who are leading members of the Indiana bar, comprising the firm of McNutt & McNutt, which has been established at Terre Haute for a good many years now; and a daughter, Miss B. E. McNutt, who resides with her parents in Los Angeles.

ALBERT A. MOORE.

Albert A. Moore was born on the 23d day of November, 1842, at Waterloo, Monroe county, Illinois. His father was William

Whiteside Moore, whose grandfather settled at Waterloo (then Belle Fontaine, in the state of Virginia), holding a commission as captain of militia, issued by Patrick Henry, Governor of Virginia. Some of the Moore family still live on the old homestead, first established in 1778.

Mr. Moore's mother, whose family name was O'Melveny, was a sister of Hon. H. K. S. O'Melveny, of Los Angeles, now deceased, one of the ablest men of the California bar, and who adorned the bench of the Superior Court of his county. Mr. Moore came with his parents to California in 1853, and settled in Alameda county, where he has since resided. He was not yet in his teens. After passing through the public schools he entered the University of the Pacific, at Santa Clara, where his education, so far as it was derived from schools, was finished. He then took up the study of law at San Leandro (the county seat of Alameda county at that period), and pursued it, under the direction of Hon. Noble Hamilton, County Judge (and afterwards Superior Judge) until he was qualified for the practice. Upon his admission to the bar he commenced practice at once.

At twenty-eight years of age he was elected district attorney. He held this office for two terms, and won great reputation as a prosecutor of criminals. It was indeed a post where his exceptional vigor of mind and skill in the elucidation and analysis of evidence could be employed to best advantage.

Since he came to the bar he has been connected with most of the important litigation in his county. And he has been often called to the courts of San Francisco. His brothers of the profession place him in the first rank. He is noted for the rapidity and power with which he makes his presentations, of either law of facts, to court or jury.

His personal figure is striking, in keeping with his energy and precision of statement. He is six feet in height and his strong physiognomy reflects his individuality and force of character.

Mr. Moore married, in June, 1871, an accomplished lady of San Francisco, Miss Annie J. Hall sister of Hon. Samuel P. Hall, another prominent lawyer, who also filled the office of district attorney of Alameda county with general acceptance for several terms, and is now Superior Judge.

It is noteworthy that Mr. Moore has always, since coming to the State in early boyhood, lived in the same county, and has always until recently practiced at the same bar.

Mr. Moore is a great favorite among his acquaintances, and especially among members of the bar, by reason of his genial social qualities. Like many men of his profession, he is very fond of out-door sports, hunting, fishing and the like, in which he indulges as often as a busy life will permit.

Mr. Moore has a grown son who bears his full name, who is a prominent lawyer of Oakland and San Francisco, and now a deputy attorney-general of the State. Mr. A. A. Moore, Jr., was united in marriage in 1889, to Mrs. Florence Blythe Hinckley, the young widow-heir to the great estate of Thomas H. Blythe.

The elder Moore removed his law office to San Francisco in 1898. His son also transferred his practice to that city.

CHARLES O. MORGAN.

Hon. Charles O. Morgan, one of the Police Judges of Los Angeles city, was born on a farm in Madison county, New York, May 7, 1854. He was raised on the farm. His early education was received in the common district schools and at Colgate Academy. Later, he entered Madison (now Colgate) University, at Hamilton, New York, and was graduated therefrom with the class of 1877. Afterwards he studied law, and, in November, 1882, was admitted to the bar by the Supreme Court of New York. In 1883 he went to the West, and first took up his residence at Huron, Beadle county, South Dakota. There he became prominent at the bar, and also held, by appointment, for nearly four years, the office of first deputy register of deeds, and *ex-officio* deputy county clerk. Afterwards, during the years 1887-88, he was deputy county treasurer. In 1888 he was elected county auditor, and held the position until January, 1890.

Judge Morgan came to California in 1892, and in that year settled in Los Angeles city. He at once entered upon the practice of law there, and rapidly won the good will and confidence of the people, and a good law business. In November, 1898, he was elected city justice and *ex-officio* Police Judge of that city, on the Democratic ticket, which ticket was defeated, with this exception. He assumed the office in January, 1899, his official term running to the first Monday of January, 1903.

The Judge's father and mother are both still living—at Hamilton, New York. Hon. John E. Smith, his law preceptor, is now County Judge of Madison county, in that state.

Judge Morgan married Miss Lizzie M.

Henry V. Morehouse

Chaphe, in June, 1878. He has no children.

The Judge is fearless and conscientious in the discharge of his official duties, and has the respect and confidence of the Los Angeles bar.

HENRY V. MOREHOUSE.

Henry V. Morehouse is a man of Southern parentage, and was born in Elkhart, in Elkhart county, Indiana, on the 1st day of April, 1849. His youth was uneventful, except in earnest labor upon the farm and other ordinary employments. His parents lost their fortune when he was quite young, and this compelled him to shift for himself; so he left home and entered the broad world at the age of fourteen. He found employment in the redwood forests of Mendocino county in this State, working in a sawmill, cutting cordwood, driving teams, etc. Being ambitious, he dreamed of the day when he could be a practicing lawyer. Realizing that education was absolutely necessary, he purchased such books as, upon examination, would enable him, by hard study, to become a school teacher, at which occupation he could find the time to study law. In time he had sufficient money to enable him to attend school for one year, and then he passed successfully the teacher's examination at Ukiah, in Mendocino county, and was at once employed in the public schools of this State. In 1869 he removed to Salinas City, in Monterey county, where at first he worked upon a farm, and then was employed in the schools, and soon rose to prominence as one of the educators of that county as principal of the leading school. He served many years on the board of education and board of examiners.

He completed his law studies, and in 1876 entered the chosen profession of his life. He was soon elected district attorney of Monterey county, which position he filled with credit and ability. In 1881 he formed a law partnership with Hon. S. F. Geil of Salinas City, which continued until January, 1890.

During that time he was engaged in all the important litigation of that section of the State, and rapidly rose to distinction. His arguments in the Pruett murder trial, the Azkell murder trial and other great criminal cases are remembered as eloquent, passionate and persuasive speeches. His success was phenomenal, and he was known as being very studious, energetic, earnest, firm and self-reliant and true to every trust.

In 1890 he removed to San Jose, Santa Clara county, and at once stood in the front rank of the profession there. He has been engaged in the important litigation of the county, and increased his reputation as a lawyer.

In politics he is a Republican, and his voice has been heard upon the stump, in every hamlet, village and city in the State. He is an impassioned and eloquent speaker.

Mr. Morehouse has been major and judge advocate of the Fifth Regiment of the National Guard of California, and has also represented the State as State senator from the Thirty-first Senatorial District for the term of four years. In the State senate he was bold, dashing and independent, and was one of the men not held in leading strings by any one. During his senatorial career he did not fear attacks from newspapers. His career in the senate was that of a bold and fearless man, of great ability and personal courage.

Mr. Morehouse is duly licensed to practice law in all the courts of the State and a licentiate of the Supreme Court of the United States. His public career, both as lawyer and politician, is a part of the history of the State. He is genial and social in disposition and his honesty has won for him such confidence among his fellow-lawyers that his bare word is always taken as good as a written stipulation filed in court.

He is married, and his wife and two daughters rank high in the social circles of San Jose. He is a member of the F. and A. M.; I. O. O. F.; K. of P., and San Jose Lodge No. 522, B. P. O. E. His career is not ended, and the State will hear from him further in law and politics. He has that love for fair play and justice, and that nervous and sanguine temperament that cannot be still and watch the procession go by. He is now in his leisure moments writing many things, which in time the public will know and appreciate.

WILLIAM W. MORELAND.

William W. Moreland was born in Clarksville, Johnson county, Arkansas, April 14th, 1845. He came to California, across the plains, in 1859, and lived for one year at Angels Camp, Calaveras county. Afterward the family removed to Stockton, and his mother still lives near Collegeville, in San Joaquin county. He was educated at the Pacific Methodist College, at Vacaville, graduating in 1867. He was a schoolmate of the late Judge Matt F. Johnson, of Sacramento county; of C. P. Berry, ex-congressman; Hon. J. H. Seawell, of Ukiah, and others who have helped to make California history. After living eight years in Oregon, where he was a teacher in Corvallis College, and superintendent of schools of Clackamas county, he returned to California in 1874, settling in Healdsburg, Sonoma county, which has been his home ever since.

Mr. Moreland was a member of the constitutional convention of 1878-9; and a State senator in 1879-80-81-82. He was the private secretary of George Stoneman during the time the latter was Governor of California. He was also a bank commissioner from 1886 to 1890. He abjured political life in the latter year, and has since been engaged in practicing law in Sonoma county.

CHARLES WHITE MORTIMER.

Charles White Mortimer, the experienced British vice-consul at Los Angeles, was born in Western Canada, April 20, 1852. He was graduated from the University of Trinity Col-

lege, Toronto, with the degree of B. A., in 1873. He studied law in that city, and was admitted to the bar there in 1879. The poor state of his health turned him to California, and he settled in Los Angeles in 1882. He has always since lived in that place, engaged in the practice of law. He has been the British vice-consul at Los Angeles since 1883. In 1887 his alma mater in Canada conferred on him the degree of M. A. Mr. Mortimer has a wife and four children.

J. L. MURPHEY.

Joseph L. Murphey was born in Lanesborough, Susquehanna county, Pennsylvania, February 19, 1849. John and Joanna Murphey, his father and mother, soon after his birth, moved to the town of Wellsville, Allegheny county, in western New York. Here he grew up on a farm, attended the common schools, the village high school and afterwards Alfred University, situated at Alfred Centre, in western New York. In vacation in the summer of 1865 he went to Pithole, in Vinango county, Pennsylvania, then the great oil boom town of the world, which in that summer grew from an empty cornfield to a city of 15,000 people in the space of three weeks. Many of the wells flowed as much as 1500 barrels of oil a day.

With another boy he went into business, and their profits were as much as $40 per day each during the early days of the place. He kept his eyes open, and became familiar with oil operations, which knowledge has served him well in California as a lawyer.

In the fall of 1865 he sold out at Pithole and went back home, and to school, leaving what then looked like a sure fortune.

Afterwards he taught school, studied law, was admitted to the bar in 1873, and has been in the active practice ever since, with the exception of parts of 1877 and 1878, which were spent in looking up a location in Kansas and Colorado, and teaching school in Kansas. After looking up Kansas thoroughly, he opened an office in Atchison. He did not like the climate, and having been in the mountains of Colorado the summer before, he was again attracted thither, and, besides this, Leadville began to open up as a great mining camp.

In the fall of 1878 he left Kansas and went to Denver, and entered the office of Browne & Putnam, who had a large practice. General Browne was the attorney-general of the territory, under appointment from Abraham Lincoln.

General Browne was an able trial and jury lawyer, and he pressed Mr. Murphey into all kinds of trials, through which he soon became familiar with Colorado laws and practice, and, besides this, Captain Putnam, who was an authority on mining law, took him through all the depths and shallows of mining litigation, and both advised him to go to Leadville and open an office.

Acting on this advice, he went to Leadville in January, 1879, and at once began law practice. Leadville at this time commenced to boom, and in February and March a stampede to it commenced, and the growth was faster than at Pithole, the oil city. The first day he opened his office he took in $100 in fees in the afternoon, in drawing up contracts and mining notices. He was kept at work until eleven o'clock at night, and had to turn clients out, to come back next day. Within a month he had a good practice, principally in mining cases.

Mr. Murphey had good success as an attorney, and also in mining ventures. He was engaged in the Iron-Silver litigation, the Scorpion mine cases, and many other mining suits, including a case against Governor Tabor and others, relating to the famous Robinson mine at Ten Mile. He was the confidential adviser of many mining operators, among whom were Tim Foley, Spencer Taylor, Rogers, and the Kennebec, Alpha, and other mining companies. He remained in full practice in Leadville until November, 1887, when he moved to Los Angeles, to go into partnership with Hon. W. P. Wade, author of "Wade on Notice," "Mining Law," and other works. The last day he was in Leadville his office was full of business, as on the first day he opened.

On arriving in California, Mr. Murphey went into the practice, and so continued, with Judge Wade, until the Judge went upon the bench as Superior Judge. He continued alone until 1893, when he and the late Judge Gottschalk formed a partnership, and which, as Murphey & Gottschalk, continued until June, 1898, since which time he has been alone in the practice.

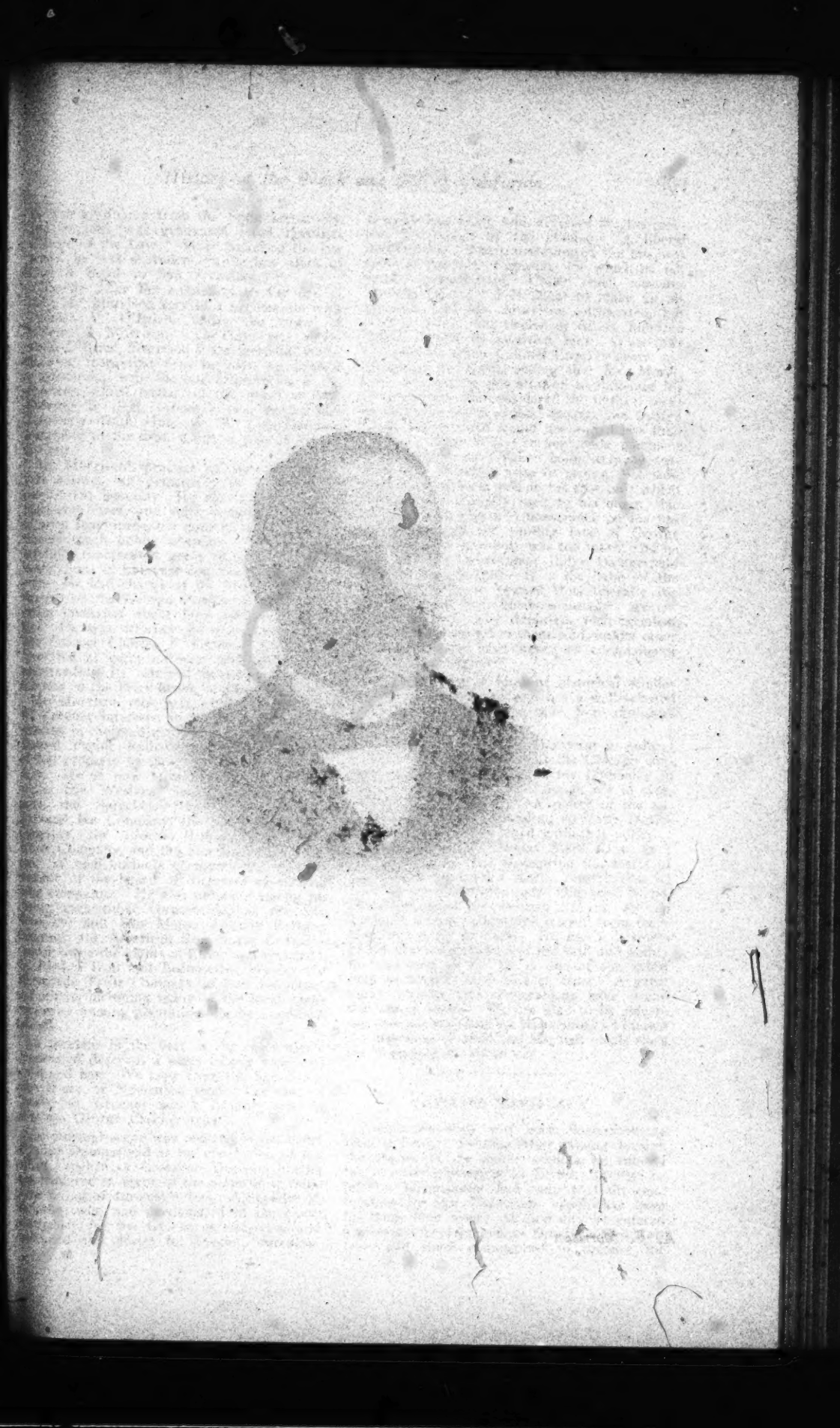
Soon after coming to California he defended Messrs. Carmichael and Gardener, who were charged with murder, before Judge Cheney, and a jury, which resulted in an acquittal. This was the last criminal case of importance which he tried. Although he has been very successful in this line of cases, he has refused criminal business, and has devoted his whole time to civil practice, and has had many important real estate, mining, water and damage cases and probate matters.

With a large and varied experience in oil, mining, water and real estate litigation, he is a safe adviser and a successful advocate.

In May, 1888, at Chicago, Mr. Murphey married Augusta Ascher, and they reside at 840 Burlington avenue, Los Angeles. Before coming to California, Mr. Murphey was a captain in the militia service, and during the Spanish-American War he assisted in organizing the Eighth Regiment of California Volunteer Infantry in Southern California. Colonel W. B. Shant was elected colonel of this regiment, and Mr. Murphey lieutenant-colonel. The regiment was not needed, and was not required to go into the service.

A. F. MORRISON.

Alexander F. Morrison was born February 22, 1856, at Weymouth, Massachusetts. He is of Scotch and Irish ancestry. He came to California at the age of eight years, in 1864. His early education was received in the public schools of San Francisco. He was graduated from the Boys' High School in 1874. In 1878



A. F. Harrison

he was graduated from the State University, and in 1881 was graduated from Hastings College of the Law. While attending the law school he was a student in the law office of Cope & Boyd, in San Francisco.

Shortly after his admission to the bar in 1881, Mr. Morrison formed a partnership with Thomas V. O'Brien, under the name of O'Brien & Morrison. The firm was afterwards O'Brien, Morrison & Daingerfield. Withdrawing from that firm in 1891, he formed a partnership with the late Constantine E. A. Foerster, which lasted till the death of Mr. Foerster, in 1898. About a year before Mr. Foerster's death Hon. W. B. Cope became a member of the firm, which is now Morrison & Cope.

Mr. Morrison's practice has been of a general nature, but principally in the line of corporation business. He has had some very important cases, and suits involving property of great magnitude, but none of these have attracted much public attention. He has successfully represented great interests in many negotiations of immense consequence and concern. He had charge of the suit for the settlement of the George Crocker trust, a trust estate involving about four millions of dollars. He was attorney for the estate of the late Colonel Charles F. Crocker, which was appraised at eight millions, and which, notwithstanding its ramified interests, was distributed to the heirs inside of fifteen months.

Mr. Morrison took part, as the attorney for the Crocker interests, in the proceedings that resulted in the readjustment of the debt of the Central Pacific Railroad and the acquisition of that property by the Southern Pacific Company. He is now attorney for the Crocker estate, the Western Sugar Refining Company, the Spreckels Sugar Company, the National Ice Company, the Alcatraz Asphalt Company, the Crocker-Huffman Land and Water Company, and the Sierra Lumber Company, all rich business corporations. He is a member of the board of directors of each of these companies. He also numbers among his clients such other corporations as the San Francisco and San Mateo Electric Railway Company, the American Beet Sugar Company (which owns the plants at Chino and Oxnard), the Risdon Iron and Locomotive Works, the Mercantile Trust Company of San Francisco, and others, including many of the local sugar companies owning plantations in the Sandwich Islands.

An incident in the first of the cases above enumerated deserves a place in our annals of bench and bar. We copy from the San Francisco *Wave* of November 1896. The suit of Crocker vs. Crocker was a friendly one, to settle the George Crocker trust:

"An unusual scene was enacted in the court of Judge Daingerfield at the conclusion of the suit of Crocker vs. Crocker. Decision having been rendered in favor of the plaintiff, it came to the fixing of attorney's fees. Alexander F. Morrison, who had participated in the cause as attorney for the Crocker estate, rose and disclaimed any desire for special remuneration, having, as he said, received for his services on behalf of the company, a liberal monthly fee. The transaction of the business came in the line of routine, for which he felt amply compensated. Under such circumstances, however, it is usual to make an allowance, and Mr. Morrison anticipated, but with no hope, that twelve or fifteen hundred dollars would be awarded him. What was his surprise when Colonel Crocker arose and addressed the court, asking that Mr. Morrison's modesty be not allowed to influence his compensation. He considered the faithful service rendered worth at least $20,000, and trusted Judge Daingerfield would not award less than $15,000. Then Will Crocker made comment in the same vein. Taken completely by surprise, Mr. Morrison rose to protest, but subsided at a vigorous pull on his coat tails which brought him abruptly back to his chair. He looked round with a remonstrance on his lips and confronted the smiling face of George Crocker. The harmony was too much, and he said no more, whereupon Judge Daingerfield awarded him $12,500. It is the habit of the Crocker family to reward thus liberally the men to whom their business interests are entrusted. This is why, doubtless, such excellent service is always given them, and, unlike other employers, they have never to complain of treachery or neglect."

Mr. Morrison is fond of historical studies and general literature, and has a well-selected private library of more than four thousand volumes.

He has always been a Democrat in politics —at least, up to the time of the Chicago convention of 1896. He voted for McKinley in 1896 and again in 1900—although not in sympathy with the imperialistic policy of the administration, notwithstanding so many Democrats are in hearty accord with that policy.

We once heard Thomas Starr King, in a lecture on Job, after recounting the assets of the patient patriarch's estate, remark that he was "a very respectable man." Our good friend, Morrison, who, we believe, has no foe on earth, is a very respectable lawyer from more than one point of view. He has a business of the first magnitude, and the skill and ability to take care of it. He is one of the safest men to counsel with and to trust. A great many persons and corporations have found this out, it seems. We are glad to be able to say that we have had his friendship and known his greatness of mind and his high ideals since the beginning of his career.

JOSEPH NAPHTALY.

Joseph Naphtaly was born September 29, 1842, in Gostyn, Prussia. After passing through the grades of the public schools, he entered the French Gymnasium at Berlin. In 1856 he left the Gymnasium, and came to California, locating in San Francisco, which has been his home ever since. In that city he entered a private school known as San Francisco College, and there commenced to prepare for

the entrance examinations at Yale. He remained there until January, 1859, when he left San Francisco to take a preparatory course of study in Williston Seminary, East Hampton, Mass. In September of that year he passed his examination at New Haven and was admitted to Yale College as a member of the class of 1863, in which year he graduated, receiving the usual degree of B. A., and in due course he received the degree of M. A.

On returning to San Francisco he entered the law office of Crockett & Whiting, as a law student. In 1865 he was appointed by Wm. Loewy, then county clerk, as his deputy in the probate and criminal department of the courts of San Francisco. In 1867 he joined Messrs. Crockett & Whiting in the practice of the law, and they formed a partnership in the name of Crockett, Whiting and Naphtaly. That partnership continued until Judge Crockett became a member of the Supreme Court of this State, when Mr. Paul Neumann, late attorney general of the Hawaiian Islands, was admitted as a partner, the firm name becoming Whiting, Naphtaly & Neumann. This partnership continued until Mr. Neumann left for the islands, and Mr. Whiting retired from practice on account of ill health in 1871. In 1872 Mr. Naphtaly associated himself with David Freidenrich and Charles L. Ackerman, under the name of Naphtaly, Freidenrich & Ackerman. This partnership has continued ever since, and at the same place, No. 426 California street, San Francisco.

In politics Mr. Naphtaly is a Democrat. He was elected to the legislature in 1869 and was the chairman of the judiciary committee of the assembly. He was attorney for Public Administrator Benjamin for five years. The firm of Naphtaly, Freidenrich & Ackerman were attorneys for Sheriff Hopkins and Public Administrator Pennie during their respective terms of office.

In 1869 Mr. Naphtaly was married to Sarah Schmitt. They have two children, Samuel L., who is an electrical engineer, and Gertrude, the wife of L. B. Feigenbaum, a merchant.

Mr. Naphtaly belongs to the Masonic fraternity and the Odd Fellows' Order. He is a most generous-hearted man and has unfailing cheerfulness of spirit and vivacity of manner.

FRANCIS G. NEWLANDS.

Francis Griffith Newlands, who is about to enter upon his fifth consecutive term as a member of the lower house of congress from Nevada, had his period at the San Francisco bar—an active and eventful one. He was born in Natchez, Miss., August 28, 1848. He entered Yale College with the class of 1867, and remained until the middle of his junior year. Later he attended the law school of Columbian College, at Washington, D. C., but prior to graduation was admitted to the bar by the Supreme Court of the District of Columbia. He came to California in 1870, and began the practice of law in San Francisco. In 1876 he formed a partnership with Reuben H. Lloyd, which continued under the style of Lloyd & Newlands, until 1882. For the last two years of this time Mr. W. S. Wood was a member of the firm, which took the name of Lloyd, Newlands & Wood. Mr. Newlands thereafter practiced alone for about two years and then became associated with ex-Superior Judge James M. Allen (Newlands & Allen). Mr. Wm. F. Herrin entered the firm in 1886, and "Newlands, Allen & Herrin" continued business down to 1893, although Mr. Newlands removed from the State in the spring of 1888, locating in New York City. Late in the same year he removed to Reno, Nevada, which has ever since been his residence.

While practicing in San Francisco, Mr. Newlands was for some years the attorney for the Spring Valley water works. He married a daughter of William Sharon, capitalist of San Francisco and United States senator for Nevada. He and Mr. Frederick Sharon were executors of William Sharon's will. Senator Sharon, who died in November, 1885, had, in a trust deed, conveyed a third of his vast estate to the three children of Mr. Newlands, the latter having lost his wife in 1883. Mr. Newlands was one of the trustees of the trust estate.

On his way to the east on a visit in 1887, Mr. Newlands sent to the San Francisco *Bulletin*, from Los Angeles, a communication of two and a half columns on San Francisco municipal affairs. (*Bulletin*, March 25, 1887.) During his residence in San Francisco, he was always of Democratic politics. His name was prominently mentioned before the Democratic legislature of 1887 for United States senator, George Hearst was chosen at that time. Upon moving to Nevada, Mr. Newlands engaged actively in the agitation of the silver question, which became paramount in the silver state, and aided in organizing the Silver party. He was for years vice-chairman of the National Silver committee. He was also active in the work of reclaiming arid lands by irrigation.

Mr. Newlands was first elected to congress in November, 1892, by the Silver party and the Silver Republicans, defeating the regular Republican and regular Democratic nominees. As the representative of the Silver party he has been in that body since March 4, 1893, so that the term for which he has just been elected will complete ten years of service. He has become one of the most useful and influential members, as he has always been one of the best-liked. He is a sound lawyer, a pleasing speaker, a ready debater, and a close student of state and national problems.

Mr. Newlands, a few years after the death of his first wife, married a daughter of the eminent lawyer, Hall McAllister, of San Francisco.

THOMAS W. NOWLIN.

Thomas W. Nowlin was born in the State of Pennsylvania, January 4th, 1848, and emigrated with his parents to the State of Iowa in 1851, where he grew up on the banks of the Mississippi river. He entered the Union

Lyman I. Mowry

Army in 1864, at the age of sixteen years, and made the campaigns through Georgia and the Carolinas in Sherman's army. Upon his discharge from the service he entered Cornell College and was graduated in the classical course with the class of 1872. He was superintendent of the city schools of Lyons, Iowa, for two years succeeding his graduation from college. He then studied for the legal profession under the tutorage of the Hon. W. G. Grohe, a well known lawyer of Iowa, and throughout the Middle West.

Mr. Nowlin went to Nevada in 1875, thence to California in 1876, where he settled in San Francisco and engaged in mining business for several years. For twenty years past he has been actively engaged in legal practice in all lines of civil business. Mr. Nowlin is identified with many of the substantial interests of the state. He is a man of excellent temperament, and a careful and honorable practioner, and well merits the success and favor which have attended his twenty-five years' practice.

LYMAN I. MOWRY.

Mr. Mowry was born in Woonsocket Falls, in the state of Rhode Island, on the 8th day of April, 1848. His parents belonged to two of the oldest families in New England, his father's ancestor having been one of the first settlers in Rhode Island, and his mother's ancestor (Whiting), having been one of the earliest settlers in Massachusetts. His father, Lyman Mowry, came to California in 1849, and settled in San Francisco, and was one of the builders of that city. His mother, with the son and two daughters, arrived in San Francisco per steamship John L. Stephens, on the 18th day of May, 1854. The son was educated in the public schools of San Francisco, and received the degree of Bachelor of Law (LL. B.) from Harvard University, in 1871.

Mr. Mowry has been practicing law in San Francisco ever since 1871; and during that time, his business has been a general one. He was engaged in all of the important cases arising out of the Chinese Restriction and Exclusion Acts, which cases involved important questions of constitutional and international law.

WALLACE M. PENCE.

Wallace M. Pence was born March 27, 1860, in Henderson county, Illinois. He was educated in the public schools and at Washington Academy, Washington, Iowa, and Western Normal College, at Shenandoah, Iowa. He graduated from the last named institution in the teachers' course, the scientific course, and the classical course. He was instructor in that college in 1883-4, and later taught in this State. He entered the law school at the State University at Lawrence, Kansas, in 1887. He was admitted to the bar of the Supreme Court of California in 1892. He enjoys a lucrative practice at Salinas.

GEO. P. PHIBBS.

Mr. Phibbs is a native of Ireland, born January 12, 1853, at Lodge Park, near the village of Straffan, County Kildare. He received a common school education in his native village and at the age of fifteen was apprenticed to a cousin of his father, a leading merchant in Dublin, then engaged in business as a wholesale and retail grocer, and wine merchant. At the age of seventeen he emigrated to the United States, settling in Cleveland, Ohio, where he engaged in the commission business. At the age of twenty-one he became a naturalized citizen of the United states, and shortly thereafter obtained a position as clerk of one of the law courts in Cleveland. He was admitted to the bar by the Supreme Court of Ohio in December, 1882, and formed a partnership with his preceptor, Hon. John B. Green, ex-state senator, and now head of the stamp department at Washington. He practiced his profession until 1887, when he removed to Pomona, Los Angeles county, California, opened an office, and practiced for fifteen months. He then settled at Los Angeles city, and engaged in practice there. In March, 1889, he was appointed clerk of the police court, under the new charter, and served in that capacity, and as prosecuting attorney in that court, until August, 1889, when he was appointed deputy district attorney of Los Angeles county, serving in that capacity under two administrations, and until January, 1893. He then formed an alliance with B. M. Marble under the firm name of Marble & Phibbs, and immediately went into active practice in Los Angeles city. The firm is still so engaged.

Mr. Phibbs has been admitted to the Supreme Court of California, and to the District and Circuit Courts for the Southern District of California, and the United States Circuit Court of Appeals for the Ninth Circuit. His firm has had considerable practice in all of those courts. He is and always has been a Republican in politics, and was twice honored by his party for nomination to important offices.

W. T. PHIPPS.

William Thomas Phipps was born on a farm near Brunswick, in Chariton county, Missouri, on March 2nd, 1859, and at the age of four years removed with his parents to a farm in Howard county, in the same State, where he lived until the spring of 1878, when he came to Yuba City, Sutter county, California. There he finished his public school course, and fitted himself for a teacher.

His experience as deputy county clerk created in him a desire for the legal profession, and he accordingly in August of 1880 entered upon the regular course at Hastings' College of the Law, at San Francisco. From that institution he graduated with his class in June of 1883, and was admitted to the Supreme Court of this State. He immediately entered upon the practice of his profession. For the first four years he was in partnership with

M. E. Sanborn, and also was assistant district attorney of Sutter county. Afterwards he practiced alone, having had his office in Marysville since early in the year 1892.

JAMES W. OATES.

This gentleman is a native of Alabama. He was born and passed his boyhood's days in the Yancey district, the storm-center of Secession, and his earliest recollections are of that era of political ferment. No American, perhaps, ever passed his boyhood amid a more exciting and passionate epoch. This, with the privations, the glamour and horrors of the war, and the chaotic times of Reconstruction, were the environment of his early life.

He was educated at Emory and Henry college, Virginia. In 1870 he returned home and read law in the office of his brother, ex-Gov. W. C. Oates, at Abbeville, and was admitted to the bar in 1871, entering into partnership with his brother, where he continued until March, 1879.

In 1873-4 he was engaged in newspaper work in connection with his law practice. In 1875 he was secretary of the Democratic State Central Committee during one of the most remarkable and hotly contested elections through which the state of Alabama ever passed. His party won, and in recognition of his services in that contest, the committee presented him with a resolution of thanks engrossed on parchment. The chairman of that committee was Walter L. Bragg, a near relative of Gen. Braxton Bragg, and who was a member of the Interstate Commerce Commission during the first Cleveland administration. Senator John T. Morgan was a member of that committee and one of the leading speakers. In 1876 Mr. Oates was appointed a colonel on the staff of Major General Holtzclaw, of the State National Guard.

In 1879 he came to California expecting to stay six weeks. On the third day after his arrival he determined to remain permanently. After passing some time in San Francisco he located in Santa Rosa, in the spring of 1881, where he has since lived. Hon. Barclay Henley and Mr. Oates were partners from 1882 to 1887, since which time the last-named has practiced alone.

In 1881 Mr. Oates married Miss Mattie, only child of the late Major Perrin L. Solomon, of San Francisco, who was United States marshal at San Francisco, 1858-1861. He has had a lucrative practice, and has handled many matters involving large interests. During 1884-1889 he was a Special United States Attorney for California in charge of timber-depredation cases involving millions of dollars. He has accumulated a competency and has a large cliental.

Mr. Oates was the nominee of his party for Superior Judge in 1890, the year Stanford swept the State for United States Senator, and in common with the most of his associates was defeated. In 1894 he was nominated for State Senator by acclamation, and though he ran ahead of his ticket several hundred, was defeated by the defection of Democrats to the Populists. He has been a number of times solicited to accept the nomination for congress in his district, but has always declined, preferring practice and home life to the unsatisfactory pursuit of Federal politics.

Mr. Oates has always been a Democrat; earnestly advocated the Spanish war; favors Expansion, the holding of the Philippines, a large navy and a more vigorous foreign policy than this nation has ever had, and a national military system sufficient to prevent the word "defeat" from ever being written across the history of this nation.

W. A. PURINGTON.

W. A. Purington was born June 17th, 1858, in Holderness, New Hampshire, where his father was pastor of the Free Baptist church. About a year later his parents returned to Maine, their native State, where he was reared. His father became well known during the Civil War as chaplain of the Seventh Maine regiment. At the age of eighteen Mr. Purington entered Bates College at Lewiston, Me., but left there two years later to enter Yale College, from which he graduated in 1880. Going to Minnesota the same year he became principal of Rochester high school, where he remained a year. He then went to Illinois where he taught school in Chicago and vicinity for six years. In this period he also studied law and was admitted to the bar.

In 1888 he came to California and opened a law office at Riverside, where he soon acquired a large and lucrative practice. In 1890 he formed a co-partnership with Mr. A. A. Adair. The firm of Purington & Adair has continued since 1890, and is well known for its large and successful law business. Mr. Purington has always been a Republican. He was appointed city attorney of Riverside in

Emil Nasbaumer

1893. This office he has held ever since. He has occupied other public offices, but has never sought them, preferring to devote his entire time and energy to his profession.

EMIL NUSBAUMER.

Judge Nusbaumer was born in San Francisco, California, on February 13th, 1856. His father, Louis Nusbaumer, who was born in Baden, Germany, was a surgeon in the army of Napoleon Bonaparte on his disastrous campaign in Russia, and was involved in the catastrophe at the bridge across the Beresina. The family sprung originally from Switzerland.

Louis Nusbaumer, together with his wife, emigrated to New Jersey in 1844. In 1848 he started across the plains for California, arriving here in the spring of 1850, after a most arduous journey. His wife followed in 1852 by way of Panama. After engaging in various pursuits, he removed to Alvarado, Alameda county, in the fall of 1856. In 1857 he removed to Pleasanton, Alameda county, and engaged there in merchandising and farming, living there and in the vicinity until his death, which occurred in July, 1878.

His son, our subject, attended the public schools at Dublin, Pleasanton and Sunol until he was sixteen, when he engaged as a clerk with Mark Ager at Sunol for two years. Then he attended the University of the State of California for two years, entering with the class of '79. Upon the termination of his Sophomore year, he went to Ann Arbor, Mich., entering the law class of the State University of 1870. He was graduated there and admitted to practice in all the courts of Michigan. He returned to California and began to practice law in Oakland, in June, 1879, and has ever since followed the profession and resided in that city. He married in 1883, Elsie H. King, a native of New York state. They have a son, Ludwig, now ten years of age.

Judge Nusbaumer was elected a justice of the peace for Oakland township, in 1882, for two years, and was re-elected for two additional terms, and upon the ending of his last term in 1888, he became assistant district attorney under Hon. Geo. W. Reed, of Alameda county. He served in that capacity for four years during the whole of Mr. Reed's incumbency of that office. He there formed a law partnership with Mr. Reed, beginning with 1889, under the name of Reed & Nusbaumer. The firm has continued ever since and has been interested on the one side or the other in nearly all the important litigation subsequently occurring in Alameda county.

Judge Nusbaumer and his partner, Mr. Reed, have always taken an active part in politics on the Republican side.

Judge Nusbaumer's appointment as a trustee of the Garcelon Trust, in June, 1896, was a notable illustration of the confidence he inspires, and bore unusual testimony to his high character as a lawyer and a man. This trust, involving a large estate, was created in February, 1891, and it was provided therein that in the event of the death of any trustee, his successor should be appointed by Mrs. Garcelon's two nephews in conjunction with the Superior Judge of Alameda County, who should be oldest in commission. Judge Nusbaumer was the unanimous choice of the nephews and Superior Judge Greene, in June, 1896, as successor of Trustee I. N. Knowles, deceased.

The Judge exerts a commanding influence in the councils of his party. He is chairman of the Republican county central committee of his county, a close friend of Governor Gage and Congressman Metcalf, and there is no man whose advice is more eagerly sought and followed in every political campaign. He is one of the strong bar leaders of central California. His career in his profession is an example to all young men who are looking to the bar as the arena of their life-work, marked, as it has always been, by high-minded conduct and devotion to duty. No element of chance has contributed to his signal success as a lawyer or to his enviable position as a citizen, but his victories have been bravely fought for and literally achieved by his own strength.

FRANK M. PORTER.

Frank Monroe Porter was born in Waushara county, Wisconsin, in 1857. He is descended from old Colonial stock. In the early part of the eighteenth century the family was located in Connecticut, and the branch from which he is descended removed from there to Vermont; from Vermont to Oswego county, New York; and from Oswego county, New York, his father moved to Wisconsin. His ancestors, both paternal and maternal, were prominent in the Revolutionary War. His great-grandfather, Moses Porter, was promoted to major for gallantry in the battle of Bemis Heights, and served throughout the Revolutionary War. The father of this sketch served in the Civil War in the Eleventh Wisconsin Volunteers, and was wounded at the charge on Fort Blakeley, Mobile, the last part of the last battle in which his regiment was engaged. Prominently in his boyhood recollections are the hardships endured during the time of the Civil War, at which time there was not left an able-bodied man in the township in which his family resided.

At the close of the Civil War his parents removed to Dodge county, Wisconsin, where his father engaged in mercantile business. In 1875, his father having in the meantime died, the family removed to Madison, Wisconsin. Mr. Porter was educated at the Wisconsin State University. He graduated from the university in the class of 1881. He studied law in the offices of Hon. John M. Olin and Hon. J. C. Gregory, at Madison, and was graduated from the law department of the State

University in 1883. In that university the great college entertainment is the annual joint debate between the literary societies of the institution. Mr. Porter was one of the debaters representing his society, the Athenian, in the contest of 1881.

Mr. Porter was for four years deputy clerk of the Circuit Court of Dane county. He was a member of the Dane county bar until 1887, when he removed to Los Angeles, California, taking offices in the California Bank Building, in which building he is still located.

Politically, since 1881, he has been a voting Prohibitionist, believing in total abstinence for the individual and prohibition for the State. He was the secretary of the Prohibition state central committee of Wisconsin, and has been prominently identified with the organization of that party in California. He has been their nominee for Superior Judge, presidential elector at large, and for congress.

In 1893 he married Suella Billmeyer, of Tecumseh, Michigan.

He is engaged in the general practice of law. His practice has been mainly that of corporation and commercial law, and he has among his clients some of the heavy business men and corporations of Los Angeles.

CHARLES N. POST.

Charles Nichols Post was born in El Dorado county, California, on the 14th day of March, 1853. His father, A. V. V. Post, a native of New Jersey, came to California in 1849, and his mother, Cornelia M. Post (nee Almy), a native of New York state, came to California in 1851. Mr. Post first attended the district school at Mormon Island, Sacramento county, then at Folsom, and next at Sacramento city, at which latter place he took up his residence in 1864.

He served an apprenticeship at the machinists' trade from 1869 to 1873, in the Central Pacific Railroad shops at Sacramento. He was deputy county recorder of Yolo county during 1876-7, during which time he commenced reading law. In 1878 he returned to Sacramento and entered the law office of Colonel Creed Haymond, as a law student. He was admitted to practice law by the Supreme Court in November, 1879.

In politics Judge Post has always been an uncompromising Republican, and has been honored by his party with many positions of public trust. He served as deputy clerk of the Supreme Court during the years 1880-1881 and 1882. He was twice elected city justice of the peace of Sacramento city, and served both terms, to-wit: from 1884 to 1889. He was appointed by Governor Markham to fill a vacancy in the office of city attorney of Sacramento city in 1892, and served one year. He was first deputy attorney general for four years under Attorney General W. F. Fitzgerald, during the years 1895-98. In 1899 he was appointed assistant attorney general by Attorney-General Tirey L. Ford, and is at present filling that position.

Judge Post is a sound lawyer, and an eloquent advocate and public speaker, being especially strong before a jury. He is an enthusiastic and prominent member of the Benevolent and Protective Order of Elks, and the Native Sons of the Golden West, being a past president of Sacramento Parlor No. 3 of the last named order.

The Judge was married in 1880 to Miss Nellie M. Shepherd, of Sacramento, to whose unfailing amiability, remarkably fine judgment and constant sympathy and support he attributes much of his success in life.

HOWELL A. POWELL.

Howell A. Powell is a descendant of a Welsh family of Breconshire. His father was a pioneer settler at the north end of the Marysville Buttes, Sutter county, in the Sacramento valley, where the son was reared through infancy and boyhood with the ordinary encompassment of an early California rancho. He received an academic education; graduated from the State normal school at San Francisco, in 1867; was principal of the Brooklyn grammar school in Alameda county in 1868; received a special course in law in the office of Judge Blatchley, of San Francisco; and was admitted to the bar in 1870, at the January term of the Supreme Court. He immediately established an office in San Francisco, and ever since has been actively engaged in law practice, having for many years enjoyed an extensive business in the civil line. He has been employed in some of the most noted civil cases of the State, and in the settlement of

many large and complicated estates in probate. Mr. Powell is now one of the attorneys of the City of Oakland in the water-front litigation with the Southern Pacific Company, which litigation affects property of greater value perhaps than any heretofore involved west of the Rocky mountains. He was a member of the board of freeholders, elected in 1889, which framed the present charter of Oakland, and was the author of that provision of the charter which makes it compulsory upon the city council to grant franchises within certain territory contiguous to the water front, to any railroad company that may seek to enter the city. In national and State politics, Mr. Powell has always been a Republican. In the presidential election of 1896, he was the McKinley elector representing the third congressional district, and received the highest vote of his party in thirteen counties of the State. His speech in Oakland during the campaign on silver, the tariff and civil service, before the National Republican League, which was published verbatim in the Oakland *Enquirer*, was said to have contributed largely in saving the State for his party in that campaign. Outside of Alameda county, the State went Democratic in the neighborhood of 3,000 votes. Alameda, Mr. Powell's county, gave the McKinley electoral ticket a majority of over 5,000. He is now serving his second term as a member of the Oakland board of education. He has resided in Oakland since 1868. In 1876, Mr. Powell was married to Miss Mary E. King. Four children have been born to them, two daughters, Eva and Helen, and two sons, Alvin and Stanley.

ISAAC H. PRESTON.

Isaac H. Preston was born in Carroll county, Illinois, in 1859. He was educated in the common schools and at Rock River University, Dixon, Illinois. He came to California and located at Los Angeles in 1882. There he studied law under Judge Waldo M. York, and was admitted to the bar in 1892 by the Supreme Court. In 1893 he undertook the management of the G. W. Morgan estate, which was deeded to him in trust for the benefit of the creditors, and two years later the estate of Ralph Rogers, also deeded to him for the benefit of certain creditors. These were large and valuable estates, which were in an embarrassed condition, and which he succeeded in settling in a satisfactory manner.

In 1900 Mr. Preston was employed in the famous Harris litigation in the state of Washington, consisting of a divorce suit, and five civil suits, resulting therefrom, the whole involving over three hundred thousand dollars, and which he succeeded in settling out of court in a remarkably short period of time, to the satisfaction of his client.

Mr. Preston is a man of family, having a wife, and one daughter, twelve years of age. He has a large office practice, and gives attention principally to probate business and complicated land matters.

JOSEPH D. REDDING.

This gifted and versatile "native son," who gave up a valuable clientage in San Francisco to follow the profession in New York City, comes back to the "Golden West" every year for an extended stay. His heart is always here. When, in 1899, we sent him a copy of Colonel Baker's famous speeches, he wrote to us, saying:

"Thos. Starr King's "Substance and Show" has been the favorite volume on my shelf for years. Alongside of it I now place this book, with an intense feeling of pride and gratification that from out of California have come some of the purest English and choicest oratory to be found in literature."

Mr. Redding was born at Sacramento, California, on the 13th day of September, 1858, coming of an old Massachusetts family. His grandfather was United States consul at Yarmouth, Nova Scotia, where B. B. Redding, father of Joseph D., was born in 1824. B. B. Redding early developed a taste for natural

history. He came to California from Yarmouth with a company of young men he had organized, and who served as crew of their own sailing vessel, and bringing a cargo of lumber. This was in May, 1850. B. B. Redding's career in this State was distinguished for industry and public spirit. He served in the legislature, was prominent in politics, for many years a leading journalist, mayor of Sacramento in 1856, and Secretary of State 1863-1867. From 1868 until his death in 1882 he was the land agent of the Central Pacific Railroad Company. He was a regent of the State University, president of the Board of Trustees of the San Francisco Academy of Sciences, and was the controlling spirit of the Board of State Fish Commissioners. He was devoted to science. He wrote, among other papers in that line, one on the climate of California, for the State Agricultural Society in 1877, and another on the foothills of the Sierra, read before the San Francisco Academy of Sciences, in January, 1879. His father survived him for several years, dying at a great age at Brighton, Sacramento county.

Joseph D. Redding, after attending the Sacramento public schools, entered, in 1871, the California Military Academy at Oakland, conducted by Rev. David McClure. He remained there for two years, and then went to the Urban Academy in San Francisco, and prepared for a collegiate course under Professor Nathan W. Moore. This accomplished, he was admitted in 1876 into the Scientific Department of Harvard University.

Mr. Redding was twenty-one years of age when he entered the law office of Hall McAllister in San Francisco, and finished his preparation for the bar, having given much previous attention to the study of law. In August, 1880, the State Supreme Court admitted him, after examination, to practice. He very soon gathered a good clientage. At the age of twenty-three he became one of the attorneys for the Central Pacific and Southern Pacific Railroad Companies, for the land departments thereof.

Mr. Redding had in charge all of the cases arising out of the overlapping of the Atlantic and Pacific Railroad grant in Southern California. These involved possibly seven hundred and fifty thousand acres of land. He was attorney for several insurance companies and mercantile houses, and also for most of the theatrical managers of the State, and those in New York who have connections with this coast.

Mr. Redding succeeded to his father's predilection for pisciculture. For some years he was president of the State Fish Commission and special agent of the United States Fish Commission for the Pacific Coast.

He was a central figure in circles of art. In 1886 he became president of the San Francisco Art Association. He was the first of chess players in California, having held the championship for 1884-'85. In 1884 he won three games from the world's champion in chess, Dr. Zuckertout. In aid of charity he appeared on the theatrical stage on several occasions. In 1878 he won the cue at billiards in the tournament at Cambridge.

Mr. Redding possesses genius in the line of musical composition. Here he challenges special attention. Miss Ella Sterling Cummins presented this side of his mind, in a way pleasing to the musical world, in a very entertaining contribution to the San Francisco of May 8, 1886. Mr. Redding was for a long time president of the Handel and Haydn Society of San Francisco. He has written several comedies.

Mr. Redding removed to New York City in 1895. He is associated in a large practice with Mr. James McNaught, under the style of McNaught & Redding. He has a family, and a moderate fortune.

D. G. REID.

Daniel Garrard Reid was born October 24th, 1860, near Manchester, Kentucky. His maternal ancestor, Governor James Garrard, was a descendant of one of the French Huguenots. Governor Garrard was largely instrumental in the passage of the Toleration Act in the House of Burgesses of Virginia, and was the only man ever elected twice as Governor of the commonwealth of Kentucky. Through his grand-parents on both sides, Mr. Reid traces his ancestry to the old New York Dutch, the English, the French Huguenots, and Scotch-Irish. Having finished his education at North Georgia Agricultural College at Dahlonega, at the age of 21, he started west. He lived in Nevada for three years, sixteen months of the time being spent as a guard at the Nevada state prison, his uncle, Major William Garrard, being warden.

While in Nevada he spent all of his spare time studying law, and in August, 1884, he went to Eureka, California, where he entered the law office of John A. McQuaid to finish his studies. He was admitted to the practice of law before the Superior Court of Humboldt county, by Judge John J. De Haven, on June 6th, 1885, and the following January, while en

Geo. W. Reed

route to Weaverville to locate, procured by his own efforts a special examination and was admitted to practice before the State Supreme Court. It was a noteworthy fact that only four special examinations were given in eight years, and Mr. Reid often wonders how he secured his, when he did not know any of the judges and no attorneys in San Francisco, and had no assistance, not even filing his certificate of examination, as required by the rules, until after his license had been granted.

He continued to practice at Weaverville, until May, 1897, when he formed a partnership with James W. Bartlett, under the firm name of Reid and Bartlett, with offices at Redding and Weaverville, and moved to the former place where he still resides. On May 19th, 1887, he married Miss Mary Elizabeth Allen, of Douglass City, California.

Mr. Reid was a member of the Board of Education of Trinity county in 1893 and 1894, and was elected a member of the assembly from Trinity and Tehama counties in 1894 as the Democratic nominee. He took a prominent part during the session of 1895, being largely instrumental in preparing and passing the revenue laws of that session.

In 1896 he ran for Superior Judge of Trinity county, but was defeated by seventeen votes. He has had quite a wide experience in the practice of law, and in two cases after the acquittal of his clients for murder, he has had to have them put back into jail until they could be spirited away to prevent them from being lynched by mobs. He was engaged in the defense of the Erickson murder cases, also the Littlefield lynching cases.

The case of Gibson vs. Board of Supervisors of Trinity County was instituted and carried through by Mr. Reid to a successful termination, and is the only bond election contest case on record in the reports.

He and his firm enjoy a large and lucrative practice, especially in mining cases.

GEORGE WILLIAM REED.

George William Reed, of the prominent and active law firm of Reed & Nusbaumer, of Oakland, has lived in that progressive city from the city's infancy, for the date to which his residence there runs back is November 14, 1856. We knew the place in that year well, and there was not much of it, but it was more oak-land then than ever since. The now populous and delightful place was a grove of oaks, diversified with scattered homes and a diminutive business center. The indigenous forest has been subducted to its last shadow, but the sightly city that has succeeded is still more beautiful, with varied flora invited by the desire of man and kept green by his untiring hand.

Mr. Reed was born in Vassalboro, Maine, on June 14, 1852, so that he has lived in Oakland since he was four years old. He there attended the public schools, and prepared for the University of California at the Oakland College. In 1872, at the age of twenty, he was graduated from the university, with the degree of A. M.

In 1876, Mr. Reed, his brother, Mr. Reed being county clerk, became a deputy in the latter's office, and served as such for two terms, or four years. During this period he studied law at night under the direction of that able lawyer, James C. Martin, since deceased, his duties as a deputy clerk affording him excellent opportunity to become acquainted with the details of law practice. He was admitted to the bar by the State Supreme Court in 1879, and entering the office of another of Oakland's gifted lawyers (A. A. Moore), he began practice and followed it for nine years. He was then, in the fall of 1888, elected on the Republican ticket, to the office of District Attorney of Alameda county. He was re-elected in 1890, his incumbency covering four years. His was a faithful and able administration of that important office, marked by the wise disposition of great public interests and the successful prosecution of some noted criminals.

Ex-Judge Emil Nusbaumer was assistant District Attorney under Mr. Reed, and at the end of their public service the two gentlemen resumed law practice at Oakland in partnership under the style of Reed & Nusbaumer. The firm has ever since then (1893) been fully occupied with a general practice steadily increasing in volume and value.

Mr. Reed is a man always true to duty, alert, ready and sedulous, "unhasting, unresting," and is one of the strongest men at the bar. He came from sturdy and industrious New England stock. He is now in the prime of life, but continues the steady and studious habits of his younger manhood. He is a very excellent man personally and socially, pleasant in address, a good, prompt speaker and debater, easy in conversation, courteous and punctual in his professional and other engagements. In his office business he is painstaking, and unflagging, having few equals in drafting papers that stand judicial test. His skill as a pleader is attested in many decisions of the Superior and Supreme Courts.

Being an ardent Republican, he has always taken an active part in politics, frequently assisting in "stumping" during the state and national campaigns. He was a delegate from the Third Congressional District of California to the national convention which nominated McKinley and Roosevelt for president and vice-president.

He has for several years been a prominent member of the Benevolent and Protective Order of Elks, is past exalted ruler of Oakland Lodge, No. 171, and in the year 1900 was a delegate to the grand lodge which met at Atlantic City, New Jersey. He is a past grand of University Lodge, No. 144, I. O. O. F., and a member of the Zeta Psi of the University of California.

JOS. ROTHSCHILD.

Mr. Rothschild is today one of our leading commercial lawyers. We do not mean by this that his practice is entirely commercial,

for he has tried cases in every department of civil law, but that the drift has been in the direction of commercial litigation, and this constitutes a large part of his practice. We do not think we err in stating that this is regarded as the cream of legal business, and the man who can command it must have given proof of an ability of the first order. It is the practice that in every large city belongs to the few. Friends, influence or wealth are all powerless to command it. It seeks pure merit, and merit alone can win the laurels. In great emergencies the best is called for, and in commercial cases where large interests are at stake the best men are sought regardless of any prior affiliations. It is to the credit of any man that he can attain such position in a community. It evidences not alone natural ability but hard work and close study. Natural ability alone would not count. This must be reinforced by intense diligence. Mr. Rothschild has worked his way upward alone and unaided. In civil law it is a slow process, but with the essentials to success it is a sure process. And he can now regard the past years with all the more

satisfaction that they have been so fruitful, and that by his ability and industry he is the representative of so many great concerns, and, when we take the aggregate amount, of vast capital. Joseph Rothschild is a native son. He is a Californian, and very proud of it. His learning in ordinary topics, as well as in the law, came from our schools. He stands as a fine type of our best young men therefore. It is true he finished at Yale and took his degree there in 1873 with honors, but the basis of his knowledge, the great better part was gained here. He went through all the grades of our schools up to the State University where he was graduated before going to Yale.

In his school days he was as popular as he has been since. The boy is father to the man, indeed, in this, as in other things. At Yale he well represented his native State, and was highly esteemed by professors and pupils alike, so much so, indeed, that the Scales of Justice was awarded him. This unique present is peculiar to Yale, we believe, and is given at the close of the term to the most popular man.

On his return to this State, Mr. Rothschild was admitted to the practice of his profession by the Supreme Court. He at once began, and from that day down to the present he has known but little idle time. As we stated before in speaking of him, he has devoted himself almost entirely to a commercial practice, and in this has had charge of some of the most important cases tried here. Commercial law he has thoroughly mastered, but nevertheless he goes exhaustively into the details of every case in which he is retained. To this he adds a thorough logical power before a court or judge; uses terse English, and divests his language of all flowers of oratory. He in fact is blunt and forcible, and in this is eloquent. Hence he has been successful. He is now the advocate for some of the most important interests and mercantile houses in the metropolis.

Mr. Rothschild belongs to many leading organizations. He is past president of the Independent Order Free Sons of Israel; past president United Lodge, I. O. B. B.; past president Golden Shore Council No. 5, United Friends of the Pacific; ex-vice president Young Men's Hebrew Association; past president Board of Relief, I. O. B. B. He is also past grand president of the Independent Order B'nai B'rith; when he attended the international convention as a delegate from the district grand lodge here, held in Richmond, Va., he was elected there Judge of the Court of Appeals for this coast, and to this important position he was afterwards re-elected at Cincinnati, Ohio, which position he still holds. This body is certainly representative of the wealth and intellect of our Hebrew citizens, and his election gives evidence of his standing. The favor with which he is regarded by his own people is indeed the very best test of his integrity. In politics Mr. Rothschild has always been a Democrat. He was elected school director some years ago, and the flattering vote he then received showed his popularity with the whole people.

He was elected president of the Democratic central committee of San Francisco in 1896. He is a member of the Iroquois Club of San Francisco. He is a director of the the Pacific Paving Company; president of the San Francisco Diamond House; president of the B'nai B'rith Hall Association, and also a member of the Yale and Concordia Clubs of San Francisco.

HENRY H. REID.

Henry H. Reid was born at Babylon, N. Y., March 14, 1845, a farmer's son, of Scotch-English lineage. He was graduated from Columbia College Law School in 1868. After a short practice in New York city, he removed in the fall of 1871 to Norfolk, Virginia, where he soon won a firm place in the esteem of the people and secured a valuable clientage. He

quickly stepped into the front rank of the Norfolk bar, while, apart from the profession, his scholarship and address made him the soul of literary and social circles. It was in 1871 that he commenced practice at the San Francisco bar, and he has since followed it there continuously.

Mr. Reid has the impulses and intuition of the true lawyer. His perception is fine, his grasp of mind broad and firm, and his analysis thorough. An unassuming gentleman, he yet has great professional pride, which is closely related to his high sense of personal honor and his superior legal attainments. His memory is true, he has remarkable power of statement and illustration, and rare perspicacity; is persistent in inquiry; and confused heaps of facts unfold into system and harmony before his searching and patient survey. Albeit his temperament is one of reserve, his breadth of knowledge and his poise of judgment have challenged the attention of the bench and of the profession generally.

A mere lawyer is only half a man, says high authority. Mr. Reid is not a lawyer merely. His mind has many sides. He has a rich fund of general knowledge. Since early boyhood he has been a great reader and close student. His conversation shows his familiarity with the best writers of every era, revealing also the well-informed man—wise in thought, full of happy suggestion, and of ever present wit.

"Reading maketh a full man," said Bacon; "conference a ready man, and writing an exact man. Histories make men wise; poets witty; the mathematics, subtle; natural philosophy, deep; morals, grave; logic and rhetoric, able to contend." In Mr. Reid these effects all stand out prominently.

Mr. Reid indulged his literary taste to a limited extent in New York and Norfolk, contributing to the columns of leading journals; but in California, while still pursuing a wide range of reading, he has seldom turned his pen to themes other than the law. However, in our book, "California Anthology," (1880), are selections from his writings here, one being a tribute to the genius of Oliver Wendell Holmes. In Bench and Bar (1889) are some observations of his upon Judge McKinstry; and the valuable Introductory article of the present History is from his pen.

In person Mr. Reid is of large and compact build, and of striking personal appearance. He is a strong man physically, as well as mentally and while of gentle disposition and temperate habits, is full of grit and stands by his convictions.

J. C. RUDDOCK.

J. C. Ruddock came to California from New York City in the year 1853, when he was about one year old. His whole life since has been spent in California. He was raised in Tuolumne county, at Jamestown, or, as it was better known among miners, "Jimtown." His father was one of the early miners of that section, having owned and mined in several rich placer claims on Wood's Creek, a large tributary of the Tuolumne River.

Mr. Ruddock was educated in the public schools, and at the age of fifteen obtained a certificate to teach, and began at that early age, at Green Springs, near Chinese Camp, in Tuolumne county. This was his first school. Finishing his term there, he went to the State Normal School—the San Jose Normal then being the only one in the State—from which he graduated. After graduating, he taught a term at Onisbo district (Courtland), Sacramento county, about fifteen miles down the river from Sacramento.

After finishing there he went to Mendocino City, on the coast of Mendocino county, and took charge of the public school. While at this place he was elected to the office of superintendent of schools of Mendocino county, which office he filled two terms, and then became principal of the Ukiah Grammar School. In 1882 he was again elected to the office of superintendent of schools for a four years' term, which position he resigned after three years and four months to accept the position of chief clerk of the United States surveyor general's office at San Francisco, under President Cleveland's first administration. At the close of this administration he accepted a position in civil life, as cashier of the Mercantile Bank in San Francisco.

Mr. Ruddock early had taste for law, and while he was superintendent of schools had spent much of his time reading on his favorite subject.

He picked it up again, and went before the Supreme Court, for examination, and was admitted to practice, January 12, 1892.

In 1890 he was the Democratic candidate for superintendent of schools of San Francisco, but suffered defeat, with the rest of his ticket, in the landslide of that year.

He has remained continuously at the practice of law in Ukiah since his admission, and is, at this writing (July, 1900) city attorney of Ukiah city.

Mr. Ruddock was appointed, by Governor Budd, one of the board of managers of the Mendocino State Hospital, in March, 1896, and held the same until removed by Governor Gage, March 1, 1900.

Mr. Ruddock is a pronounced Democrat, and has labored for many years in perfecting the organization of that party in California, under the direction and auspices of the State League of Iroquois Clubs, of which he is Past Grand Sachem, and of which he is at present Grand Organizer.

At the death of Senator John Boggs, of Colusa, he received a tie vote for the nomination of joint senator from the district comprising Colusa, Glenn and Mendocino counties. After the tenth ballot he withdrew in favor of James W. Goad, of Colusa.

In 1880 he was married to Miss Kate Siddons of Ukiah, who left him a widower, in July, 1884, with a surviving child of a family of two, a boy having died before the mother.

In 1890 he was married to Miss Mary

Hildreth, daughter of William J. Hildreth, one of the pioneers of Ukiah Valley and Mendocino county. His family now consists of five, including himself. In politics, Mr. Ruddock is a hard, but fair fighter. He is radical, but consistent and sincere. His politics have been shaped because he is a bitter and lifelong opponent to the protective tariff. He was opposed to the Spanish war; he is against expansion, in the ocean, and believes our mission was ended in the Philippines when Spain was driven out; he believes the Constitution follows the flag, and is opposed to anything that savors of militarism and imperialism.

In the war in South Africa he was a strong sympathizer with the Boers.

Mr. Ruddock is a fine elocutionist, and a public speaker of force and eloquence.

A. K. ROBINSON.

Alexander Kelley Robinson was born July 26th, 1850, in Gallatin County, Illinois, of a Virginia family, and is a descendant of Speaker

Robinson, of the House of Burgesses of Virginia. He received a thorough education in the schools of Shawneetown, Illinois. He migrated to Placer County, California, in 1870; studied law, and was admitted to practice in all the Courts of the State. He has attained success in the profession. He was District Attorney of Placer County in 1890-92, and filled that office with distinction and integrity. He has a lucrative practice in Auburn, and takes an active part in the affairs of his City, County and State. He is a member of various fraternal orders; and has held numerous public positions of trust. It is said that he combines the urbanity and suavity of his ancestor with the business courtesy and affability of the Westerner.

J. M. ROTHCHILD.

Joseph M. Rothchild, of the prominent San Francisco law firm of Rothchild & Ach, was born in Louisville, Kentucky, in January, 1852. He attended Yale College, academical department, graduating with the class of 1870. He prepared for the legal profession in the office of Hamilton Pope, and in the law department of the University of Kentucky, and was admitted to the bar in 1872. Coming to California in that year, he entered the office of Haggin & Tevis, San Francisco. These gentlemen were lawyers, but not engaged in practice, being capitalists of unlimited resources, and engaged in financial, mining and other enterprises on a grand scale. After passing a year with that firm, Mr. Rothchild removed to Los Angeles, and formed a partnership with John R. McConnell and John D. Bicknell, which continued a few years, under the style of McConnell, Bicknell & Rothchild. He returned to San Francisco in 1877, and practiced alone until 1887, when he united with Mr. Henry Ach, to form the still existing firm of Rothchild & Ach. These gentlemen have always had a valuable practice, general, corporate and commercial, which of late years has grown to very large proportions.

Mr. Rothchild married, at San Francisco, in 1875, Miss Adelaide E. Marx, and has three children.

JOHN E. RICHARDS.

Among the Native Sons of California who have achieved success in more lines than one, and exhibited not only a broad catholicity of taste and sympathy, but a versatility of talent and an industry directed to varied accomplishments, none ranks higher in merit or in repute among competent judges than John E. Richards of the San Jose bar.

The temptation toward change which besets men of many talents, which has led so many gifted minds to turn capriciously from one profession to another, and to take up a different pursuit at each different epoch in life, becoming all things by turn and nothing long, has never affected the course of Mr. Richards

He has had a mind sufficiently strong to dominate his talents, instead of being dominated by them. All his faculties have been developed continuously, as parts of a complete self-education, and not as diverse incidents in a changeful career. Consequently, while he has achieved distinction as a lawyer, writer, orator, poet, lecturer, and professor, his career has been directed always toward eminence at the bar, and all his studies and his work have been made subservient to the one object of achieving that intellectual fullness which is essential to the comprehension of law as a philosophy of justice, as well as a code of procedure.

Born in Santa Clara Valley in 1856, and descended, on his mother's side, from that strong North of Ireland stock that has given so many illustrious men to American history, and, on his father's side, from the sterling Welsh race, Mr. Richards passed from the public schools of San Jose to the University of the Pacific, from which he graduated with the degree of B. A. in 1877. Choosing the law as his profession, he entered the law department of the University of Michigan, and taking the full course, received the degree of LL. B. in 1879. He then returned to San Jose and began the active work of an attorney. A young lawyer in beginning practice has always much leisure. Mr. Richards employed his in studies, not only of the law, but of the allied subjects of logic, politics and economics. For three years he served as trustee of the University of the Pacific, and as lecturer on political economy, modern history and constitutional law. His incessant activity found time, also, for literary work, and through the columns of the local press he made himself known as a forceful writer of editorials, as well as a graceful essayist and a poet with a true inspiration for melody and sentiment. He is one of the most logical reasoners at the bar, and being able to apply the fundamental principles of law to cases that come before him, is one of the safest counselors in the State. Being still a young man, the better part of Mr. Richards' career is in the future, as he has taken a rank among the leaders, not only at the bar, but in the wider fields of literature and politics.

Among the most important cases with which Mr. Richards has been associated during his twenty years of practice may be mentioned the case of Richards vs. Donner, in 72 Cal. 207, in which he was plaintiff as well as advocate, and which is the leading California case upon the validity of conveyances made without consideration by persons of weak mind subjected to undue influence. The cases of Edwards vs. San Jose Printing and Publishing Company, in 99 Cal. 431, and Childers vs. The San Jose *Mercury*, 105 Cal. 284, with which also Mr. Richards was connected, are leading cases upon the law of libel. In the case of *Ex Parte Flaherty*, in 105 Cal. 558, Mr. Richards ably defended the right of the citizen to freedom of religious worship; while in the case of *In Re Shortridge*, in 99 Cal. 526, he stood strongly and successfully for liberty of speech and of the press. These cases indicate the line and character of Mr. Richards' thought and work as a member of the California bar.

JOHN H. RUSSELL.

John H. Russell was born in Cook county, Illinois, on July 16, 1843, receiving his primary education by working on his father's farm during summer and attending public school in winter, until he arrived at the age of sixteen, when he became a student at the Northwestern University at Evanston, Illinois. There he remained until the breaking out of the Civil War, at which time, he, like many others of his fellow-students, offered his services to his country. He became a member of the Thirty-ninth Regiment of Illinois Volunteers, known as the "Yates Phalanx," so named by the famous war Governor of that state, and shared with the other members of his regiment in its first baptism of blood at Alpine Station, West Virginia, when they so effectually repulsed the advance of Stonewall Jackson's division, on January 5, 1862; but, being vastly outnumbered by the enemy, they withdrew across the Potomac River and successfully defended Hancock, Maryland, after a terrific bombardment by the Confederate forces. The Confederates then turned their attention toward Romney and the immense government stores at Cumberland, Maryland, to relieve which our subject marched to Cumberland with his regiment the distance of forty miles in twenty hours. His regiment then became a part of the division of the lamented General Lander, who was succeeded by General Shields. The skirmishes, battles, marches and countermarches that followed during the succeeding campaign up and down the Shenandoah Valley would be tedious to the reader, but suffice it to say that this intrepid western division administered to Stonewall Jackson his first and only substantial defeat at Kernstown, near Winchester, on March 23, 1862. At the close of Shields' operations in this portion of the Old Dominion, the brigade to which our subject was attached was sent by transport, down the Potomac River and up the James River, for the purpose of reinforcing the Army of the Potomac, then about to "change base." It arrived in time to take part in the battle of Malvern Hill, and covered the final retreat of the army of McClellan down the Peninsula; garrisoned Suffolk for several months, proceeded to Newberne, N. C.; Hilton Head, S. C.; took part in the storming of Morris Island, Forts Wagner and Gregg, and the other operations of the army in General Gilmore's department in 1863. Mr. Russell then re-enlisted in his old organization, which was sent to the Department of the James, and took part in the sieges of Petersburg and the battles before Richmond.

During the winter of 1864-65 Mr. Russell appeared before a board of officers, convened for that purpose, and was recommended for promotion and commissioned a second lieutenant in the Thirty-eighth United States Colored

Troops. He was given the command of a company, and when the forward movement was begun, led his company over the works and into Richmond, being among the first Federal infantry to enter that city, except as prisoners of war. After the close of the war, Mr. Russell was promoted to first lieutenant, and with the corps commanded by General Godfrey Weitzel, was sent to Texas. The corps performed duty along the Rio Grande, watching the progress of reconstruction, and more especially observing the movements of Maximillian and his "imperial" army, and in readiness, if necessary, to enforce the Monroe doctrine. The weakness of the new empire in Mexico, however, rendered any direct action unnecessary. Lieutenant Russell served successively as company commander, regimental and post quartermaster and aide-de-camp to the commanding general, and was finally mustered out of the service March 1, 1867. He had served in the army more than five and a half years continuously.

Once home again, our subject renewed his collegiate studies, and graduated in the year 1868, from the law department of the Chicago University, with the degree of Bachelor of Laws. He then studied law in the office of D. G. Hamilton, Esq., in Chicago. He removed to San Jose, California, in 1869. For two years he was deputy city clerk in San Jose, and for three years deputy county clerk. Since 1880 he has been actively practicing his profession, with what he modestly terms reasonable success. He has been engaged in the trial of many important cases.

Mr. Russell is married and the father of a promising son and daughter, both grown and of whom he is justly proud. He has a happy home in the suburbs of the Garden City. He has for many years been a church member, and thoroughly believes in love to God and to mankind as a religion. He holds that it is the bounden duty of every citizen to give attention to politics as the safeguard of the country. He is a Republican, but does not seek office. He is a member of the Odd Fellows, Loyal Legion, Grand Army of the Republic, and other organizations.

FRANK D. RYAN.

This well-known lawyer and honored native son was born in Sacramento, May 11, 1850. He read law in the office of Hon. Robert C. Clark, who was afterwards County Judge for a long period. He was admitted to practice by the Supreme Court, in November, 1880. He was elected a member of the assembly in 1882, and served as such during the session of 1883 and the extra session of 1884. He was chief clerk of that body during the sessions of 1885 and 1887.

Mr. Ryan was district attorney of Sacramento county from 1891 to 1899. In that office he participated in the trial of many important cases, among the number which attracted attention being the cases of People

vs. Dolan, People vs. Gardner, People vs. Jeffries and People vs. Palmer. His career as district attorney was highly successful, and he retired from the office with the highest commendations of the people of his county. Mr. Ryan has also participated in the trial of many important civil actions, among which may be noted Gillespie vs. Winn and Miller vs. Mayo.

Mr. Ryan has been prominently identified with the organization and growth of the order of Native Sons of the Golden West. He was one of the incorporators of the Grand Parlor and is a past grand president of the order.

THOS. HENRY SELVAGE.

Thomas Henry Selvage was born on the 22nd of April, 1857, in Orient, Aroostook county, Maine. His father was a lumberman operating on the head waters of the St. Croix river, the dividing line between Maine and New Brunswick. During the early life of

Thos. Henry Selvage

young Selvage, he followed the occupation of his father, attending the public schools whenever the opportunity offered. In 1874 he came with his parents to California and located in Humboldt county. He attended the public schools at Arcata, and afterwards spent a year in St. Louis College in British Columbia.

Returning to Humboldt county in 1883, he commenced the study of law while working in the redwoods. He thus pursued his studies until the spring of 1887, when he went into the law office of J. D. H. Chamberlin, where he remained until the spring of 1888, when he was admitted to the bar. He then commenced the practice of law at Eureka. He taught commercial law in the academy at Eureka for three years. In 1892 he was elected district attorney of Humboldt county, and served in that office for one term. He was one of the leaders in organizing the Humboldt chamber of commerce, and was elected its first secretary.

Mr. Selvage is a Republican and has for years past taken an active part as a campaign speaker. He is a man of great energy, an eloquent and forceful speaker, and a trial lawyer of superior ability. He has since youth been a great reader, his favorite studies being history, biography and current literature. He is married and has two children, a girl and a boy.

T. H. Selvage received the Republican nomination for State senator, September, 1900, for the First Senatorial district of California.

During the campaign of 1900 *The Californian* in its editorial columns, spoke of Mr. Selvage and his candidacy for State senator as follows:

"Mr. Selvage is a lawyer of excellent standing and practice here, a former district attorney, a cheerful, tireless and able worker in the cause of the party, a prominent candidate, two years ago, for the Republican nomination for Lieutenant Governor, and a gentleman in every way worthy of the honor conferred upon him.

"To the best impulses of every workingman in this senatorial district, we apprehend, will the candidacy of Mr. Selvage powerfully appeal. It will appeal to the best impulses of all men who admire decision in resolution, perseverance in performance, inflexibility in the convictions and fearlessness in the inevitable conflicts.

"By sheer force of character has Mr. Selvage risen from the ranks. Can we not in memory go back to the time when he was a laborer and worked in the woods? Can we not recall his battles with adversity? How, in the face of discouragements sufficient to appall one less resolute, he studied law, was admitted to practice, and in his chosen profession speedily achieved success? Than Tom Selvage there was never in the history of the First Senatorial district a candidate more deserving. Possessor of a pleasing personality, popular, an indefatigable worker, an attractive, able and effective speaker, a good lawyer, he could and would as State senator serve the people of this district faithfully and well. The First district is Republican, but in this instance the party ought to be satisfied with no ordinary majority; we should strive to render it overwhelming."

In the election which followed on the 8th day of November, 1900, he was elected by an overwhelming majority. His own county gave him a majority of 2,341, this being the largest vote ever cast for any person in Humboldt county.

During the session of January-March, 1901, he took prominent part in all the matters coming before the legislature.

The San Francisco *Call* correspondent thus refers to the Senator's first speech in the senate, on January 30, 1901:

"Senator Selvage made his first speech before the senate this morning, and so seductive was his eloquence that the senate added $1000 to his appropriation to welcome President McKinley, and passed his resolution with a rush. The resolution provided for a reception committee composed of the President, President pro tem., secretary, sergeant-at-arms and five members of the senate and the speaker, speaker pro tem., chief clerk, sergeant-at-arms and nine members of the assembly, and appropriated $1000 for the committee's expenses. This was amended to make the committee first provided a committee of arrangements and to make a reception committee of the whole legislature, with $2000 for expenses."

Mr. Selvage assisted in the prosecution of Charles W. Bowden for the murder of Lillie M. Price, at Eureka, the accused being convicted, and the last person to be hanged outside of the State prison. Mr. Selvage was district attorney at the time of the execution.

The senator took the stump for Governor Gage in the State campaign of 1898, and for President McKinley in 1900.

M. E. SANBORN.

Miles Edward Sanborn was born at Polo, Illinois, November 1st, 1852, and was educated in the public schools and at Rock River Seminary, Mount Morris, in that State. He read law at Polo with Hon. James C. Luckey, afterwards attending the Union College of Law at Chicago, graduating therefrom with the degree of bachelor of laws, June 25th, 1874, and on the 10th of September in the same year was admitted by the Supreme Court of Illinois to practice in all the courts of the State. In the spring of 1875 he established an office at Dunlap, Iowa, and soon after was elected city attorney of that place. In the summer of 1878 he came to California and in January, 1881, located permanently at Yuba City. For two years he acted as assistant to the district attorney of Sutter county, and was then himself elected to that office, which he filled with ability and zeal, giving such general satisfaction that he was twice re-elected. In 1884 he revisited Polo and there married Frances M. Luckey, the daughter of his former law preceptor. The marriage was a happy one and two bright children, daughter and son, bless the union. Upon the completion of his third term as

district attorney in January, 1889, Mr. Sanborn built and removed into the commodious offices which he still occupies at Yuba City, and furnished them with one of the most complete libraries in that section of the state.

Quiet and unassuming in manner, Mr. Sanborn yet possesses in a marked degree those elements of unswerving integrity, unflagging

energy, and thorough knowledge of the law, that bespeak the successful attorney. These qualities have earned for him a large clientage and the well deserved reputation of being a safe counsellor and a case-winner. In private life, as in public, he has always avoided display, but has ever been ready, with voice and purse, to assist in any deserving public enterprise or private charity.

S. C. SCHEELINE.

Simon Cleophis Scheeline is the son of N. Scheeline, and nephew of the banker, Daniel Meyer, of San Francisco. He was born December 31, 1853, in Woodbury, Bedford county, Pennsylvania. He came to California with his parents in the latter part of 1856, and lived until July, 1859, in Gibsonville, Sierra county, where his father was engaged in mercantile business. He came to San Francisco, where he has since resided, in the same year. He attended private schools for four years: then entered Union grammar school, where he graduated at the end of two years, and then entered San Francisco high school. He graduated in 1869 from that institution in the English course. He then took the post graduate course for one year in Latin and Greek. He entered the State University in 1870, and graduated therefrom in 1874. This was followed by a two years' course in the Columbia Law school, New York city, from which school he graduated in 1876, in the same class with Delaney Nichols, U. S. Grant, Jr., and Perry Belmont.

Mr. Scheeline returned to San Francisco in 1878, and formed a law partnership with Judge Simon Rosenbaum, which partnership still continues. The firm has an exclusively civil practice. Mr. Scheeline has acquired some repu-
tation as an expert on the question of bond
of municipal and private corporations. Hi
other specialties are probate and real estate
matters. He has never held public office. His
father was for two years a member of the San
Francisco board of education. He is a mem-
ber of a large number of fraternal and benevo-

lent associations, notably I. O. O. F., A. O.
U. W., National Union, General German Ben-
evolent Society, Altenheim, Eureka Society,
and the San Francisco Verein.

DENVER SEVIER.

Denver Sevier was born February 19, 1860,
the son of one of the early pioneers, who
was elected sheriff of Humboldt county for
two terms. He commenced the practice of

the law in 1889, being thoroughly prepared
therefor by study and a four-years' service
as chief deputy in the county clerk's office of
Humboldt county. He belongs to the Odd
Fellows and to the Native Sons. He conceived

the idea of having the grand parlor of Native Sons meet in Eureka. This grand body of young men numbers nearly 350 members, containing some of the brightest minds in the State. Mr. Sevier went to Sacramento and presented the claims of Eureka to the grand parlor, and that body voted two to one in favor of Eureka as against San Jose. The meeting of the grand parlor was one of the best attended and most enjoyable ever held in the history of the order.

Mr. Sevier is a hard student and believes in keeping well to the front in the profession. He has a large, up-to-date law library. Of marked success at the bar, and known generally as a hard worker, it is often said that if anybody can dig out the law, he can. He is retained in some of the most intricate litigation in his county. He and his law partner, T. H. Selvage, Esq., recovered the largest verdict ever obtained from a jury in Humboldt county, namely, $22,632.

Mr. Sevier is retained by the Eel River and Eureka Railroad Company in its present litigation in regard to the route along the water front of the city of Eureka.

ERNEST SEVIER.

Ernest Sevier was born in Humboldt county, California, on the 1st day of June, 1856. He was admitted to practice before the Supreme Court of this State on January 4th, 1884, and has since been actively engaged in the profession at Eureka. He has also been admitted to practice before the different Federal Courts.

He claims relationship with the Sevier family of Tennessee, whose ancestor, Gen. John Sevier, was the American General at the battle of King's Mountain during the latter days of the Revolution, and was afterwards the first Governor of Tennessee.

Mr. Sevier's father was one of the first settlers in Humboldt county, where his widow and three sons still reside.

Our subject is an active and energetic attorney, who makes the cause of his clients his own, and who never loses a case through his own fault. His practice has been general, though he is considered specially strong before a jury.

He is married and has an interesting family of children—five boys and one girl, ranging in age from one to ten years. He is a Republican in politics.

Some of our readers will doubtless recall the interesting exploit of this gentleman in causing a large and elegant house to be removed from Arcata across Humboldt bay to Eureka, a distance of twelve miles. This was accomplished by lashing together two large jetty lighters, which were used in conveying rock to supply a government contractor on the jetty at the entrance to Humboldt bay. The removal was accomplished without accident, and our advocate and his family have ever since occupied the house as their permanent home.

GEORGE D. SHADBURNE.

George David Shadburne was born in Brenham, Texas, June 13, 1842.

He comes of old English and French ancestry. The town of "Shadburne," in Essex, England, was named after some of his paternal ancestors. His great grandfather, Amos Shadburne, settled in Louisville, Kentucky, early in the eighteenth century. His grandfather, William Shadburne, settled in Bardstown, Kentucky, about the beginning of the nineteenth

century, and there married Miss Prudence Merrimee, whose family had just arrived from France.

His father, William Henry Harrison Shadburne, at the age of eighteen, went to Texas and joined in the Texas Revolution, in which he had numerous hairbreadth escapes, and was engaged in many battles, being in at the close, at the battle of San Jacinto. He married Miss Eliza Miranda Wheeler, from Mississippi, of

which marriage our present Mr. Shadburne was the issue.

Born, as it were, on the battlefield in the stirring times of the Texas Republic, Mr. Shadburne at an early age imbibed a love of independence, which has followed him through life. He was educated at St. Mary's College, Kentucky. At the age of nineteen he entered the Confederate Army to fight for the integrity of his native state. By his skill, bravery and dash he was soon the leader of scouts of the army of Lee in northern Virginia, and as chief of General Wade Hampton's Scouts, he made much of the history of the ill-starred Confederacy.

For over two years, in the position of leader of scouts of the Army of Northern Virginia, he rendered valuable service to his beloved Southland, and was loved and esteemed by all his comrades and commanders. When the sun of the Confederacy had gone down in blood and disaster, and nothing but charred ruins and desolation were to be seen in the South, Mr. Shadburne attempted to leave this country for Brazil, failing in which, he sought retirement, seclusion and reflection near Bardstown, Kentucky, where he pursued the study of law. In the spring of 1867 he was admitted to the bar at New Orleans, Louisiana, and practiced his profession for a short time thereafter at Milliken's Bend, in that state. There, on June 13, 1867, he married Miss Ada M. Grivot, a young lady of great beauty, education and refinement, and a member of one of the oldest and best French families of Louisiana.

On June 13, 1868, Mr. Shadburne and his young wife arrived in San Francisco, where he has since resided.

In California he has been constantly, arduously, and assiduously engaged in the practice of his profession, which he esteems in its integrity. There is no fee great enough, and no influence persuasive enough, to induce him to take a dishonest case.

He is unflinchable and desperately in earnest in pushing his cases, and never knows defeat as long as there is a court to which he may appeal. He has had much conspicuous litigation, and his success has been proverbial. He has acquired a fine home on California Street Hill, San Francisco, and also owns the substantial brick building on Sacramento street, in which his law offices are located. He is a man of most positive character, but he has most engaging manners and manifests a personal interest in everybody, and everybody seems to be his friend. Mr. Shadburne has been an ardent advocate of all the great improvements in San Francisco since his settlement there, and has done much for the growth and development of the State. He will be greatly regretted when he goes to his fathers.

J. S. SLAUSON.

This gentleman, who left the legal profession many years ago, held a high place at the bar.

Jonathan Sayre Slauson was born in Orange county, New York, December 11, 1829, of English ancestry. He grew up on a farm, and was educated in the district school and at Poughkeepsie. He was graduated from the State Law School, at Poughkeepsie, in 1854. He began the practice of law in New York City in 1855, and followed it there until 1864. In the latter year he came to California, but very soon pushed on to Austin, Nevada, the center of great mining activity. He engaged in mining there for four years, also practicing law in partnership with Hon. Charles E. De Long. During this period he was twice elected mayor of Austin, serving four years, which about covered the time of his residence there. The law firm was dissolved in 1868, Mr. De Long becoming United States Minister to Japan, and Mr. Slauson removing to San Francisco, California.

Mr. Slauson settled at Los Angeles in 1874. He was called immediately to be president and manager of the Los Angeles County Bank. He held that position until 1883, and has not, since he assumed it, been at the bar. He is now a capitalist, engaged in banking and financial operations, and business enterprises.

Mr. Slauson is possessed both of fine legal ability and business sagacity. He is a man of high education, and well informed on general subjects. His temperament is quiet, and his manner dignified. He has been influential in the councils of the Republican party, and active in church and charitable work. His church is the First Presbyterian. He has ample means, is married, and has a grown son and two married daughters. He has been a member of the Chamber of Commerce since 1894.

T. M. STEWART.

Thomas Mefford Stewart was born in Dayton, Ohio, in 1847. He was liberally educated. He was graduated from the Dayton High School in 1863, after which he lived for some years on a farm. He was graduated from Shurtleff College, in Upper Alton, Illinois, in 1873. He then taught mathematics in that college for two years. He graduated from Newton Theological Institute, in Massachusetts, in 1876. Coming to California in that year, he taught three years in California College at Vacaville, 1876-1879. From 1880 to 1885 he was president of Ottawa University, Ottawa, Kansas. He studied law in Idaho, and was admitted to the bar there, in 1887. His office was at Blackfoot, and his practice embraced many cases involving water rights and constitutional questions. In 1892 Mr. Stewart was the candidate of the Prohibition party for Supreme Judge.

It will be seen that he has been a great traveler over the wide West, but he seems to be permanently and agreeably established in law practice now at Los Angeles, where he located in 1893. He is a good, clean man, a sterling character, an able lawyer, with a paying business. In 1896 he was a candidate for Supreme Judge on the Prohibition ticket, and was the nominee of the same party for Superior Judge in 1900.

Charles Silent

CHARLES SILENT.

This gentleman has been distinguished at the bars of the two beautiful and opulent cities of San Jose and Los Angeles. (We had occasion to say, in effect, the same thing of Colonel S. O. Houghton.) When we say that he is of German birth, it will create as general surprise as when we recorded that Reuben H. Lloyd first saw the light in Ireland.

The ex-United States Judge was born in Baden, in 1843. His father, who had taken part in the Revolution of 1848, came to this country, bringing him and the family, in that year, and settled at Columbus, Ohio. The son began to provide for himself in his twelfth year. Like M. M. Estee (q. v.), he came to California on borrowed money. He was young enough, surely. He sailed from New York, arriving in San Francisco, by way of Panama, in August, 1856, at the age of thirteen. After a stay of a few weeks, he went to Drytown, Amador county, and worked at divers employments. He had, even earlier, determined to become a lawyer, and kept the goal in view through his boyhood struggles. He gave his spare hours to study. For a term of three months he attended the public school. In his seventeenth year he was granted, of course after proper examination, a teacher's certificate of the first class. His first school, soon obtained, was in a country district. After one term he was transferred to the public school in Drytown. The pupils were but recently his schoolfellows, and the boy-teacher probably had no easy yoke. But he had marked success with this school, and continued teaching, the while saving his money, with a view to going to college before finishing his law studies.

In the summer of 1862 the young man entered the sophomore class of the University of the Pacific at Santa Clara, having pursued advanced studies while teaching. At this early stage in his young career he had become a money-lender on a small scale. His debtor, a business firm, apparently prosperous, had, as a consideration, given him an interest in their house, but failed within a month after he had entered college, and left him without means. However, he finished the first term of six months. In the same year, 1862, while in college, Governor Stanford commissioned him second lieutenant of a military company, which tendered its services to the general government for the Civil War. They asked to be sent east, but this was not granted, and they declined to enlist in California, because of the chance of being sent to guard Indians.

Upon leaving college, our friend became principal of the Santa Clara public schools, and held the position until 1866. During this period he kept to his college course of study at night, and secured later on the degree of A. M. He then, while still at the head of the schools, took up the study of law. A year passing, he obtained a leave of absence for six months, and went to San Francisco, where he entered the law office of S. F. and J. Reynolds, to learn the practical work of the profession. In 1866 his course of law reading was finished, and he gave up teaching and secured an appointment as a deputy in the county clerk's office at San Jose, his purpose now being to familiarize himself with practice and pleading. He was admitted to the bar of the Supreme Court in 1868, and immediately became a partner in the leading San Jose law firm of Moore & Laine, the name of which was thenceforth Moore, Laine & Silent.

Mr. Silent had been enjoying a large practice in San Jose for ten years, when, in 1878, he was appointed one of the judges of the Supreme Court of Arizona. Not long after assuming that office, at Prescott, he became assured that practice at the bar of Arizona promised better remuneration than his place on the bench, and he determined to resign. The legislature, understanding his purpose, increased his salary in the sum of $2,000 over that of his two associate justices. He retained the position, but resigned in 1880. Removing to Tucson, he was at the bar there for three years, doing a business that kept him fully occupied and yielding him large reward. His health failed then, and he returned to San Jose.

He passed a good, long period in rest and recreation, and, in 1885, removed to Los Angeles. In that city he has always since resided, and at the bar thereof has always been an honored leader. For more than ten years he was associated in practice with the veterans, S. O. Houghton and Alexander Campbell (whose interesting careers are set forth in this History) under the firm name of Houghton, Silent & Campbell.

Judge Silent's life has been one of eminent success. Not only from his law practice has he always gathered rich returns, but he has made many business ventures which resulted very differently from that little loan of 1862. While a law student in San Francisco, and later while a teacher in Santa Clara, he supplied the general government with cavalry horses. In 1868 he procured from the legislature a franchise to construct the first street railroad in Santa Clara county, running between San Jose and Santa Clara. He and his associates completed the road in the following year. The franchise was for twenty years. The cars run along the famous "Alameda" through trees planted by the Fathers a hundred years ago. Governor Haight, in considering this proposed franchise, was himself silent, and it became a law without his action. According to an act passed at a later session, the "Alameda" would seem to be 115 feet wide. (Laws of 1871-72, page 367.)

In 1874 Judge Silent was made the president of the company which started the narrow-gauge railroad which runs from Santa Cruz across the mountains to Oakland; and the first section from Santa Cruz to Felton, including the wharf and street railroads at Santa Cruz, were built under his superintendence. This is one of the most instructive lives to consider in all this history, if we duly observe its freedom from fever and its calm, healthful and unflagging purpose from its very childhood bud.

Judge Silent is a distinguished citizen, all

apart from his profession and his varied business interests. He has great public spirit. While living at San Jose he was one of the first actors in the good roads movement, which gave to that locality its beautiful ways, including the drive to Alum Rock Park and the road to Mount Hamilton.

Since removing to Los Angeles he has been identified with all enterprises for the public good or the advancement of the city. He has been a member of the Chamber of Commerce since 1890. In 1897, when unemployed men, in large numbers, were parading the streets, without food and unable to obtain work, he started the movement, through the Merchants and Manufacturers' Association, to relieve the distress. Under his direction a fund of $27,000 was raised, which was expended in constructing the beautiful entrance to Elysian Park, thus providing employment for the needy. The labor was done under his personal supervision. They say in his city that in this unselfish service he neglected his private business for two months, and often arose from bed before daybreak to visit the spot where work was going on.

The Merchants' and Manufacturers' Association, in recognition of his good work in this matter, made him an honorary life member, and presented him with complimentary resolutions, beautifully engrossed.

The Los Angeles *Express*, at the time this undertaking was being carried out, had these remarks in its editorial column:

"Judge Charles Silent has endeared himself to the workingmen of Los Angeles by his acts within the last few weeks to an extent that will make his name to be honored with new light for many years. Others have been equally active in the relief of the deserving poor by providing them honest employment, but it does not detract from their efforts in the least to refer to the dignified and helpful course that Judge Silent has been pursuing in the cause of humanity with such marked results. It does not tickle the vanity of men of the Silent stamp to say a word of grateful appreciation, for he has shown a spirit broad and unwavering toward those in need, and so free from self that there must be but little in his nature that we could touch with flattery. Wealth often sweetens and mellows human nature, and those who have enough and more of this world's goods than they need are in many cases the possessors of big hearts, and intellects to direct charities so that the recipients do not feel the burden of unrequited favors, or the dispensers the burden attendant upon misdirected assistance."

In the general judgement of the bar, Judge Silent is a sound, safe, conservative lawyer of a high order of ability. The present excellent judges of the Superior Court of Los Angeles concur in this estimate. In argument he never declaims, but is always pointed and sensible, successful before juries, but more effective and more at home before and addressing the bench.

The Judge has been twice married. His first wife was the daughter of Rev. John Daniel of Santa Clara, whom he married in 1864. She died in 1870. In 1872 he married the daughter of M. Tantau, an old citizen of Santa Clara county. There is a large family of sons and daughters, a number of them grown, some of the daughters married and some of the sons in business.

The Judge's home in Los Angeles is one of the finest in the State, and with most attractive surroundings. He has accumulated a large fortune, as the reader has already inferred.

C. M. SIMPSON.

Hon. C. M. Simpson, State Senator for Los Angeles county, was born in Rockville, Ind., on December 9, 1844. He went with his parents to Kansas in 1857. In June, 1861, he enlisted in the Union army, serving as a scout and on all kinds of independent duty until September, when he enlisted regularly in the Ninth Kansas volunteer cavalry. He served until April 12, 1865, when he was mustered out and returned home, having given four years in all to his country's service. He then went upon the farm and worked until 1868. In that year he married. In 1869 he moved into Iola, the county seat of Allen county, and entered mercantile business, which he very soon abandoned on account of failing health.

From 1870 to 1878 inclusive, Mr. Simpson held the office of clerk of the District Court of Allen county, being elected by the Republicans for four successive terms. He was also a member of the City Council of Iola for four terms, was mayor for one year, and school district treasurer three years.

In 1877 he was appointed postmaster at Iola, and held the office for nearly ten years.

Senator Simpson was admitted to the bar in 1877, and afterwards served two terms as city attorney of Iola. He came to California in 1886, and has always since lived and followed law practice in Pasadena. In this State he has been as active and conspicuous not only in the profession of law, but also in public life as he was in Kansas. He was president of the Republican Club of Pasadena in 1888, and a member of the City Council in 1889. He was a member of the assembly in 1893, and in 1894 was elected a State senator and re-elected in 1898, his present term running to January, 1903. At the session of 1897 he was chairman of the senate judiciary committee. At the session of 1893, in the assembly he opposed the resolution that favored the free and unlimited coinage of silver. In this State, Senator Simpson was first admitted to practice law in the Superior Court of Los Angeles county, and afterwards was admitted in the Supreme Court upon his certificate of admission to the Supreme Court of Kansas. The senator's record, as thus briefly written, shows him to be a lawyer and legislator of exceptional ability and experience.

WILLIAM D. STEPHENS.

This gentleman is a brother of ex-Judge A. M. Stephens, a notice of whom is on another page. He was born in Jackson, Tennessee, in

C. N. Sterry

1843, and came to California, settling at Los Angeles, in June, 1875. He has always since been engaged in law practice in that city. He was admitted to the bar in Memphis, Tennessee, in 1868. His residence since 1878 has been in San Gabriel, near Los Angeles.

Mr. Stephens is a commissioner in bankruptcy. He married, in 1890, Miss Antoinette Washington Dorsey, daughter of Dr. Frederick Dorsey, of Hagerstown, Maryland.

C. N. STERRY.

Clinton Norman Sterry was born near Ashtabula, Ohio, April 8th, 1843. He was the son of DeWitt Clinton and Elvira Miller Sterry, and was taken by them in infancy to Norwich, Conn., where he lived till he reached his thirteenth year, when the family moved to Lake City, Minn. Here he grew into young manhood. He went to Oberlin to school, in 1860-61.

He had been in school less than a year when that shot from Fort Sumter fired the land, and he marched out with that "toothbrush brigade" which belonged to the Seventh Ohio, to take his part in the titanic struggle coming on.

He served for one year and a half, and was sent home to die, but even at this age was a hard man to beat. In a few months he had reversed the decision, and, gaining a new trial organized a company, and re-entered the army as Captain of heavy artillery of the First Minnesota, serving until mustered out in '65.

He subsequently studied law at Ann Arbor, Michigan, and was admitted to the bar in Lake City, Minn., in 1868. For five years he divided his time between the practice of law went to Cottonwood Falls, Kansas, when he and his dog and gun, discriminating largely in favor of the last two. In March, 1873, he began earnest work that took him in the June following, to Emporia, Kansas. He was soon made a partner of the firm of Ruggles & Plumb, perhaps the strongest firm in the State. From this time Captain Sterry rose rapidly in public notice and estimation. He was recognized by the public as a strong, keen, tireless worker, and in private, by all who knew him, as an honorable, generous, loyal friend.

The Captain was appointed as a Santa Fe attorney in 1882, and has been acting in that capacity up to the present date. He was appointed general attorney for that road for New Mexico in January, 1892, and became solicitor for the road west of Albuquerque in the summer of 1896. It was in October, 1896, that Captain Sterry went to Los Angeles, to make his headquarters and home in that peerless city, where he has since become so prominent at the bar.

In September, 1899, he was appointed general attorney for the Valley road. He has won for himself in California the same "golden opinion from all sorts of men" that he won in Kansas. All who know him speak of him as honest, able and leal.

A lawyer who has had thirty-three years' experience at the bar and on the bench, and who during the greater part of that time has been acquainted with Captain Sterry, says this of him:

"Captain Sterry received his title of captain in the Civil War, in which he commanded a battery with distinguished ability. After the war he practiced law in Emporia, Kansas, with a prominent lawyer named Ruggles, under the firm name of Ruggles & Sterry, The partnership became a celebrated one owing to the ability of both members, but Sterry was essentially the lawyer of the firm. His opinions on questions of law were trusted on any subject he investigated. He became particularly skillful in the trial of cases, and was successful before court or jury where success was possible;—so much so, that his services as a trial lawyer were in demand throughout a great part of the state, and to a considerable extent in important cases in adjoining states. His success at the bar was extraordinary, and called the attention of the officials of the Atchison, Topeka & Santa Fe Railway Company to him and his career as an advocate, and he became the counsel of that corporation through merit alone. His strength as a trial lawyer lies first in his great ability to get at the very meat of the matter in controversy; next in his untiring industry in the preparation of his cases, both as to the investigation and presentation of his facts and law; third, in his imperturbability of conduct during a trial, and his direct, forceful and logical presentation of the pivotal facts and turning points of the law, either to court or jury. His tone of voice is never harsh or disagreeable, but pleasing and impressive. In the conduct of the trial his opponent may quarrel with the judge, but Sterry, never. Polite, insistent and shrewd, he yet invariably maintains his dignity, and secures the good will and respect of the court.

"Having had but one line of legal work for many years, he is not known to the bar generally, but he is, in fact, one of the ablest and strongest trial lawyers of the entire American bar, perhaps having no superior anywhere as an advocate. His probity and uprightness of character, both as a lawyer and citizen, are beyond all question."

JOHN P. STROTHER.

This gentleman was born in Kentucky on February 16, 1837. He was educated in the common schools, and was graduated from the law department of Louisville University in 1858. He began the practice of law in Saline county, Missouri. He was very successful at the bar, and also held many public offices. He was county attorney for many years, and in 1872 was elected state senator. At the second session of that body in which he served, he was chairman of the judiciary committee. Later he was elected Judge of the Sixth Circuit of Missouri, and served the full term of six years, ending in January, 1887. He declined re-election. Just before he left the bench, the bar of Lexington met and passed resolutions expressing hearty appreciation of his impar-

tiality as a Judge, his thoroughness of investigation, and his eminent ability.

Judge Strother removed with his family, in 1892, to Fresno, California, being charmed by the climate and the great raisin industry there, having spent the previous winter at Fresno himself, where his son, Sidney L. Strother, resided. Since then he has been engaged in the practice of law. He was chosen the first president of the Fresno Bar Association a few years since. He and his son before-mentioned were partners of Mr. J. R. Webb, until that gentleman became a Judge of the Fresno Superior Court.

Judge Strother is an influential member of the Methodist Church, South. He has filled many important places of trust, both in the local church and the general church. He has been three times a member of the General Conference, the law-making body of the church—at Louisville in 1874, at Memphis in 1894, and at Baltimore in 1898. At the latter session he was chairman of the committee on "publishing interests."

FRANK M. STONE.

The story of Mr. Stone's life possesses exceptional interest; there is much that is strange and much that is picturesque, in both his personal and his professional career. It will add a pleasant chapter to our History.

Frank M. Stone was born March 12, 1847, at a small town near Concord, in New Hampshire. In his infancy his parents removed to Boston, Mass., where his father acted as a fiduciary agent for heirs of estates in probate, and was elected to the legislature. He, the father, at the time of his death, which occurred in 1881, was chairman of the joint legislative committee on corporations. Among his close personal friends was Hon. John D. Long, now Secretary of the Navy, who was then Governor of Massachusetts.

Mr. Stone's early education was obtained at the academy in Royalton, Vermont. He thereafter was graduated from the Boston English and Classical Schools, and finished his education under private tutors. He commenced the study of law under the directions of his father in the early seventies. His health becoming impaired, he shipped as supercargo of a sailing vessel, making several voyages to the Azore Islands, also to the West Indies and to Europe. His life at sea was full of adventure, including the wrecking of his vessel and his drifting alone in mid-ocean for an entire night off the Island of St. Michaels. It was followed by a most exciting trip from Petersburg, Virginia, to Mobile Bay, Alabama, while negotiations for peace were in progress in 1865, and before transportation by rail had been resumed. He took up his studies again in the backwoods of Alabama, and in the uplands of Georgia, living on what he could obtain by foraging.

Mr. Stone came to California in 1874, and finished his course of study in the office of Colonel Joseph P. Hoge, the Dean of the California bar—spending the years 1878-79 in his office. "A particularly pleasant period was that," he once said to us. He was admitted to the bar by the Supreme Court of this State in the spring of 1880. He was deputy district attorney of the city and county under Hon. Leonidas E. Pratt, in 1882, and continued to act in that capacity until December, 1882, when he resigned. He thereafter formed a law partnership with Hon. A. A. Sargent, ex-Minister to Germany, and ex-United States Senator, and such partnership continued until Mr. Sargent's death in August, 1887.

While Mr. Stone held the office of deputy district attorney, he prosecuted many notable cases, among which was that of Maroney for shooting Judge D. J. Murphy in open court. Judge Murphy, who had not yet become Superior Judge, had, in defending a man in the Police Court, awakened the wrath of Maroney by his cross-examination of the latter, who was a police officer, and the prosecuting witness. Judge Murphy's life hung in the balance for some days. During the progress of the Maroney trial a peculiar incident occurred. The case had taken several months to try, and, at its conclusion, was submitted without argument. The jury retired and, after being out two nights and a day, came into court and requested counsel to argue the case. Henry E. Highton represented the defense. Court and counsel being content, the jury was brought in and the case was argued for three days. The jury again retired—the result of their balloting for something like four days, being seven for conviction and five for acquittal, the vote never having changed for one ballot.

The case of the People v. Carl Johansen was one of peculiar private and public concern. The defendant was a sailor, and, while being shipped by his boarding-house master, one Sanders, both being Swedes, Johansen shot Sanders, killing him instantly. Throwing his pistol into the bay, he shouted, "I have killed a shark." Upon being placed upon trial his counsel interposed the plea of insanity. The defendant was adjudged guilty and sentenced to death. His peculiar appearance during the trial so affected Mr. Stone that he went to see him personally at the county jail, after his conviction, particularly inquiring about a scar upon his temple. The man replied through an interpreter that the scar was from a pistol ball and that the bullet was then in his brain. Inquiring regarding his family, Mr. Stone became satisfied that the history of his life had not been brought out upon his trial, and that, possibly, the defense of insanity should have prevailed to the extent that the punishment should have been imprisonment, rather than death. Not being able to obtain the address of any of his people, but only the fact that he was raised in the province of Kalma, Sweden, the attorney wrote a history of his trial and directed it "To any friend or relative of Carl Johansen, Kalma, Sweden." It brought a reply from the Governor of the province, praying to have the execution delayed until the story of Johansen's life should be laid before the court. Judge Freelon, the then presiding Judge, granted the request for delay, and the

Frank M. Stone

facts as appeared from the evidence taken by the Government of Sweden, showed that the defendant had in his native land, attempted suicide by shooting himself in the head, that it was true that the bullet still remained in his brain, that he had escaped in the dead of winter from an insane asylum, clothed only in such material as he could obtain by cutting up and using fur rugs. He jumped from a two-story window, gathered clothing in one place and another, and shipped before the mast for San Francisco. His mother and two sisters were in an insane asylum, and the father was a subject of epilepsy. Mr. Stone was still in office, and with these facts before him, he called the jury together, re-submitted the facts, and by unanimous vote they requested the Governor to commute the sentence to life imprisonment. Governor Stoneman acceded to the request. Johansen was sent to San Quentin and within three months was removed, a raving maniac, to the asylum in Napa, whence he shortly escaped, and it is supposed that he perished in the mountains, as remains of a person answering his description were found some months afterwards.

The Swedish Society of San Francisco, and the Government of Sweden took action, extending their thanks to Mr. Stone, both personally and in his official capacity.

The peculiar Chinese case of People v. Tarm Poy, is known in the criminal annals of the State as the "Hatchet Case." The facts are as follows: On the corner of Dupont and Jackson streets, the most brilliantly lighted corner in Chinatown, San Francisco, one night at about 11 o'clock, a Chinaman was assailed by a "hatchet man" and the autopsy showed seventeen frightful wounds made by a hatchet, any one of which would have proved fatal. The assailant fled, leaving behind him on the scene of the tragedy, a hat. The present Police Captain Wittman was then a sergeant and in charge of the Chinatown squad. He ascertained that the murderer had fled along Dupont street for about twenty-five yards, disappeared up a stairway and no trace of him was thereafter discovered, nor was any one found in the building who could be in any way implicated in the perpetration of the crime. At the head of the first flight of stairs, the sergeant found an open window. At this point of his investigation he was informed that the relatives of the deceased suspected one "Tarm Poy," who lived in Washington alley, as being the criminal. The sergeant within two hours of the killing visited the dwelling place of Tarm Pay and arrested him. Asked to produce his hat, he could not do so, and upon the hat, which was found upon the scene, being placed upon his head, it fitted perfectly. Sergeant Wittman, placing the hat and Tarm Poy in charge of an officer, returned to the stairway before referred to, and getting out of the window, proceeded over the various intervening houses and finally ascended a ladder and reached a sky-light, which being open, he descended through it to the room in which Tarm Poy had been found when arrested.

The fight between the friends and relatives of the deceased and of Tarm Poy became most intense. The deceased was of the "Fong family." Books were circulated over the State. It was found that 4000 of the family resided here; and the entire number subscribed to defray the expense of prosecution. At this point Mr. Stone was specially retained, having long since ceased to hold official position, to prosecute the accused. A dramatic incident occurred during the trial. The Chinese vice-consul having been subpœnaed to testify, the Chinese interpreter for the Fong family suggested that, as sometimes a Chinaman printed his name on the inside band of the hat, the consul be requested to turn down the band of the hat, which was found on the scene of the tragedy, to ascertain if any identifying mark could be found thereon. After an examination, the witness testified that he found the name of Tarm Poy in Chinese characters written on the band of the hat. It was shown that the hat had never left the possession of the police from the time it was picked up on the street. With this chain of circumstantial evidence, the defendant was promptly convicted and sentenced to death. The case was appealed by the eminent counsel, D. M. Delmas, who raised many and most interesting questions of law. The appeal was unavailing; the judgment was affirmed.

At this point of the proceedings the Fong family was so grateful to Mr. Stone for the outcome of the case, that each member of the family then known to reside in California, was appealed to; and by contributions in sums ranging from five cents to twenty dollars, gave him, in addition to a large money fee, a solitaire diamond for which they paid one thousand dollars, and which our friend still wears triumphantly, notwithstanding the sequel.

At this point Hon. S. M. Shortridge appealed to the Governor for clemency. After various kinds of arguments, at which, however, Mr. Stone was not present, Governor Waterman pardoned Tarm Poy "upon the condition that he leave the State." The records show that Tarm Poy lost no time in availing himself of the privilege.

The strangest part of the story remains to be told. Something like a year afterward, the chief man in charge of the prosecution as representing the Chinese, and who furnished the testimony and produced the witnesses at the trial, confided to Mr. Stone that "it did not make much difference, because Tarm Poy was not the man who committed the murder." He said that it was a part of the Chinese religion that when a man of a particular family was murdered, a member of some antagonistic family must answer therefor with his life. In this instance, they had seized upon the information gained from Sergeant Wittman and had concluded that Tarm Poy came nearer filling the bill of a victim than any one of whom they had knowledge, and they had woven around him a mass of circumstantial evidence almost unparalleled in criminal jurisprudence. He then and there told Mr. Stone that while the coroner's inquest was in progress and the

hat was lying upon the table at the morgue, he having deftly secured a Chinese printing brush in his sleeve, had printed the name of Tarm Poy in the band of the hat under the very nose and eyes of the police, and had not been detected therein; that he was satisfied that another man had committed the murder, but having no evidence to substantiate the belief, had determined upon the sacrifice of Tarm Poy.

In narrating these facts to us in conversation some years afterwards, Mr. Stone said, "I have never taken a Chinese case since that trial."

This history is given for the first time, and will be a matter of considerable astonishment to the other learned counsel, who practically agreed that the defendant was guilty.

Among the civil cases of marked interest and which have been cases personally conducted by Mr. Stone, was that of Cook v. Pendergast, (61 Cal., at page 72), which we believe is accepted as settling the law and practice as to change of venue. The point raised never having been before advanced, the case stands as the leading one upon the question therein involved.

The Estate of Flint, 100 Cal., page 391, has been much cited in the matter of contests of will, wherein the questions of undue influence and incompetency are raised. The case must be particularly pleasant to him on account of the express compliment therein given him by the court as to the manner of the preparation of the bill of exceptions.

The case of Humphries v. Hopkins calls for mention, because it lays down the law as far as this State is concerned, regarding the rights of a local creditor as against those of a receiver of a foreign court, who has taken possession of property within the jurisdiction of the court appointing him receiver. It is reported in 81 Cal., 551.

The estate of William H. Moore, deceased, wherein for the last sixteen years Mr. Stone has represented the children of Moore as against the claims of his second wife, the stepmother of the children, probably covers a longer period of time in the matter of litigation than any other reported in our State. William H. Moore died in 1870, leaving a large estate, which has now been in litigation thirty years; it has been before the Supreme Court in its various branches between fifteen and twenty times, and can be cited as authority upon more points of probate law than any other. Judges from all parts of the State have passed upon various questions raised. Two of the original counsel in the case have become Superior Judges, and died. At least five of the several judges who have participated in the various branches of the case have died. Children and grand-children of William H. Moore have been born and reared since 1870. Something like sixty or seventy thousand dollars has been spent in litigation, yet strange to say the estate today remains intact and of greater value than when Mr. Moore died. Taken as a whole, it is a remarkable probate case—the strangest part of which story was its culmination in the year 1899. Then, after twenty-nine years of litigation, it was decided that the most valuable part of the estate never belonged to William H. Moore, but was the property of his first wife, who died one year before Moore, and by the decree of the court the children of the first wife now receive in value after thirty years of litigation, more than the amount for which the entire estate was originally appraised in 1870.

We have no space left to speak of the political events with which our subject has been connected, during his partnership with Senator Sargent, and the well-remembered Stanford-Sargent contest, nor to his traits of personal character, except to say that he is a man of intense loyalty to friends and unwavering fidelity to purpose. He is in full practice, with elegant offices in the towering Claus Spreckels building. He is married, but has no children. He joined the Free and Accepted Masons in 1868 on becoming of age, taking during that year the various degrees up to and including that of Knight Templar.

FRED. H. TAFT.

Fred H. Taft was born in Pierrepont Manor, Jefferson county, New York, April 4, 1857. With his parents he removed to Iowa in the spring of 1863, where his father, Rev. S. H. Taft, founded the town of Humboldt, Humboldt county, and also established Humboldt College, from which institution the son graduated in 1878. From June, 1874, while pursuing his studies, he conducted the Humboldt *Kosmos*, the official county paper, which he continued to edit until he sold the plant in the fall of 1882. The next spring he became one of the founders of the *Hardin County Citizen*, at Iowa Falls, Iowa, which paper he disposed of early in 1884 to accept the management of the Fort Dodge, Iowa, *Messenger*. This employment he relinquished in 1887, and in the next spring he located in Sioux City, Iowa, where for more than four years he was with the Sioux City Newspaper Union. It was during the latter part of this period that he reverted to his original intention of studying law, and took up the work, being admitted to practice by the Supreme Court of Iowa in May, 1892. He thereupon formed a law partnership with P. A. Sawyer, which was dissolved on Mr. Taft's removal to California in the following January. In the fall of 1893 Mr. Taft located in Santa Monica, and soon resumed his practice, on forming a partnership with R. R. Tanner, city attorney, under the firm name of Tanner & Taft. This firm is now one of those enjoying a wide acquaintance and practice, whose demands rendered the establishment of a Los Angeles office a necessity late in 1897, and the two offices are now maintained.

Mr. Taft was married in 1881 to Frankie M. Welch, at Humboldt, Iowa, and a son and daughter share the comforts of their seaside home.

EDMUND TAUSZKY.

Mr. Tauszky came with his parents to the United States from Hungary, in 1866, being but a child at the time. His eldest brother, Dr. Rudolph Tauszky, had preceded the rest of the family, and was well settled in New York City as a physician. He was resident physician at Mt. Sinai Hospital, and had been a surgeon in the United States Army. He was also a medical author of repute. He died comparatively young, but lived to see his brother, our subject, established in law practice in San Francisco, and to make him a brotherly visit there.

Mr. Tauszky attended school in New York for some years, until his mother's death, which occurred in 1869. He then went to St. Louis, where he had a married sister, and where he finished his education. Thereafter, to perfect himself in commercial studies, he attended the Jones Commercial College of St. Louis, which awarded him a diploma.

Mr. Tauszky came to California in 1876. Locating at San Francisco, he became clerk in the law firm of Wallace, Greathouse & Blanding, which was succeeded by Pillsbury, Blanding & Hayne. He was in that office from July, 1879, until his admission to the bar, in 1885. He had during this period been a diligent student in the Hastings College of the Law. He has been industriously occupied at the bar of San Francisco ever since his admission. In the years 1887-88-89 he was also a court commissioner of the Superior Court.

Mr. Tauszky and Mr. T. J. Lyons are the reporters of the decisions of Hon. James V. Coffey, the honored and distinguished Superior Judge of San Francisco. The first volume of these reports appeared in 1888. In 1893 he formed a partnership with Hon. W. E. F. Deal and George R. Wells, under the firm name of Deal, Tauszky & Wells. This association still exists, and has always done a large and general law business. A sketch of Hon. W. E. F. Deal is on another page.

CAMERON E. THOM.

Captain Cameron E. Thom, retired patriarch of the bar of Los Angeles, is a native of Virginia, born in Culpeper county, in 1825. He came to this State in 1849, in the service of the Federal government, for the purpose of taking testimony in land cases before Hon. George Burrell, United States commissioner for the Los Angeles district. His official work being accomplished, he remained in Los Angeles, which has always since been his home. He followed the practice of law for more than a quarter of a century, with continued success, invested in lands, and long ago became possessed of considerable wealth. In the early days he was city attorney of Los Angeles, and district attorney of the county. He was State senator for the district comprising Los Angeles, San Diego and other counties, at the ninth and tenth sessions of the legislature, when that body met annually, in 1858 and 1859. His politics were, and still are, Democratic. He has also been mayor of Los Angeles.

This venerable and respected citizen, who is further referred to in the sketch of Judge E. M. Ross, long ago retired from the bar. He was one of our ablest lawyers, and is a man of fine attainments in general scholarship.

CHARLES W. THOMAS.

Charles W. Thomas was born near Vanaburgh, Kentucky, October 29, 1852. When a child of five his parents removed to Missouri, where he spent the years of his childhood, youth and early manhood. He was brought up on the farm, where his contact with nature developed and matured a naturally strong and vigorous body.

The country at that time offered very inferior opportunities for education; a few months in the year for a very few years, constituted the sum total of his school life until he was seventeen years of age. Ambitious, plucky and precocious, he was not daunted

by these discouragements. When a mere child he overheard his father say to one of the neighbors one day that "Charlie was a bright boy, and he intended to give him an education, and make a lawyer out of him." From that moment he dates his faith in himself, and determined to make good his father's expectation of him. The father was a poor man with a large family; was only getting comfortable when the war and the evils of border warfare swept away his prosperous beginning. The boy, although young, contributed largely to the support of the family, which had to become refugees in a neighboring state. It was not until the lad was a man in stature that peaceful pursuits after the war made it possible to attempt to realize his ambition. He earned what he could on the farm, aside from the service which he owed his father, and with this scanty stock, went forth into the world to procure an education. He entered the Kirks-

ville, Missouri, Normal School. After spending in one brief term of ten weeks his slender means, he returned to the farm to replenish his store. And thus, alternating labor, physical and mental, he reached a degree of equipment which enabled him to conduct successfully a graded school at White Cloud, Kansas, as principal. He completed the four years' course of the normal, in two and one-half years, a feat of labor never before performed in the history of the school, and probably never equalled since.

The two years succeeding his graduation were spent in teaching, as principal, at Sheltina, Missouri, always with the cherished expectation of qualifying himself for the law. He read a number of legal treatises during the time; and in the short space of six months after going from the school room, was admitted to the bar in St. Joseph, Missouri, in 1878. He practiced law five years in Oregon, Missouri, when, his health failing, he came to Woodland, California, in 1885, where he has been actively engaged in practicing law ever since.

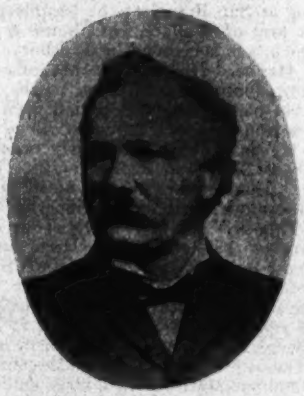
Mr. Thomas' life is a monument of what industry, frugality and perseverance can achieve over the most unyielding obstacles. His marked success should be an inspiration to every young man of right principles and character. Never having spent a day reading law in any man's office, or under any man's direction, or in any law school, he can be said to be self-made in the fullest sense. During his twenty years' practice no less than thirteen young men have been admitted to the bar, exclusively through his office, and under his direction and training.

He finds time in the midst of unusual professional activity to devote to all public interests and enterprises, whether as president of the Chamber of Commerce, or on the executive committee of the Sacramento Valley Development Association.

While never seeking political preferment, and never having stood for office, he has not been indifferent to political issues and measures, and has discharged the duties of citizenship with the same faithfulness and capability which characterize every effort he makes in whatever field. He has been instrumental in building up public libraries, establishing literary societies, and in the most marked way advancing the literary and intellectual tone of the community where he lives. He is a married man; has two children, the eldest, a son, in Stanford University.

J. W. TURNER.

This gentleman was born on September 8, 1848, at Merigomish, Pictou county, Province of Nova Scotia. He spent his boyhood days on the farm. His parents were Scotch Presbyterians, whose strict teachings left a lasting impression on his mind. He received his early educational training in the Merigomish High School, to attend which he had to travel two miles, and in the winter facing the northern blast with the thermometer frequently down to twenty degrees below zero. At the age of sixteen he passed the examination held for teachers in the common public schools, and taught for two years. In the winter of 1866-7 he attended the Pictou Academy and took the full classical and philosophical course, under Professors Bayne and Jacks. Again he taught school in order to obtain money to prosecute his studies, and thereafter, in 1868-9, he attended the medical department of Dalhousie College and University at Halifax City. The practical knowledge there acquired in the dissecting-room and laboratory became of use in after years in the trial of cases involving injuries to the person, suits for malpractice and where death resulted from poison. In 1870 he read law under the directions of Hon. Martin Isaac Wilkins, Queen's Counsellor, and thus became acquainted with the elementary principles of the common law. In December, 1870, he visited friends in California and concluded to remain. He engaged in mining in Sierra and Plumas counties, but, like many others, failed



to find the "blue lead." In 1877, he received serious injuries in a cave at Potosi, and while recovering entered the law office of Clough & Kellogg at Quincy, Plumas county. By close application and the aid of a most remarkable memory, he made rapid progress in his studies, and on December 8th, 1878, was admitted to practice before Hon. G. G. Clough, Judge of the Twenty-first Judicial District. Shortly after this he opened an office at the mining town of LaPorte, in southern Plumas.

The adoption of the new constitution affected the attorneys throughout the State, and Judge Sawyer's injunction in the case of the farmers against the miners shut down many mines in the northern section, thus seriously interfering with the practice of the mining lawyers. Having little to do except to read text-books, many of which he borrowed from Judge Clough, he mustered up courage, and upon a certificate signed by Creed Haymond and Geo. A. Blanchard, presented himself for examination before the Supreme Court "with fear and trembling." On May 11th, 1880, he was admitted to practice in all the courts of the State. On July 16th, 1883, on motion of Judge

Waldo M. York, he was enrolled as an attorney in the Circuit Court of the United States for the Ninth District of California. In November, 1880, he moved to Oroville, Butte county, and shortly after entered into partnership with the late Judge Burt and ex-Attorney-General Joe Hamilton. The death of Judge Burt dissolved the partnership.

Mr. Turner's fiery denunciation of an act of the presiding judge led to strained relations, and he burlesqued a decision of the judge on a question of title to mining ground by pretending to locate the townsite as a mining claim. The judge reversed his ruling but Mr. Turner refused to further practice before him, and in 1884 settled in Weaverville, in Trinity county. There he acquired a lucrative practice. The marriage of Hon. T. E. Jones, Superior Judge, to his wife's sister in 1888, disqualified the court from trying cases in which Mr. Turner appeared, by reason of the Campbell Act. It operated such a hardship on Mr. Turner that he gave up his practice and located in 1889 at Eureka, Humboldt county. He found it slow work to get a foothold there, owing to the fact that business was crystallized, but he has frequently been called into adjoining counties to try important cases.

Mr. Turner takes but little part in politics. He is a tireless worker, patient in investigating facts, fearless and aggressive, and having once undertaken a case, cannot be swerved from the path of duty as he sees it. He is a master of irony and sarcasm, detests treachery, and denounces the dishonest practices too often indulged in by some of the profession to get business. He has not been successful in acquiring this world's goods, but points with pride to the records of the Supreme Court of this State in his suit for libel against The Examiner (115 Cal. Rep.), where it was alleged under oath and admitted on the trial, "that during all his years of practice he demeaned himself in the practice of his profession with honesty, integrity and strict fidelity to the interests of his clients."

He was married in 1879, and his family consists of his wife, two sons and three daughters. He is an active member of the Masonic fraternity, and regards Freemasonry as the strong bulwark of liberty, the "light of the world," and one of the surest safeguards against ignorance and superstition. For many years, through the legal publications, he has advocated the abolishment of trial by jury, and the trial of all cases before three judges; and has urged that our system of pleading, mode of trial and of appeals, be reformed and simplified. He believes that our judges should be appointed solely on account of their ability and integrity, holding office during good behavior and while physically able to discharge their duties, and that their salaries should be doubled, thus securing the best order of mind for the bench; that our circumambulating Appellate Court should be abolished, and the court permanently established at San Francisco; that the custom of writing long decisions should be changed, and the decisions be rendered briefly, orally, from the bench at the conclusion of the argument, and that rehearings should be had only in capital cases, with a view to end the law's delays and lessen the expense of litigation.

F. P. TUTTLE.

Fred P. Tuttle was born at Auburn, Placer county, California, September 28, 1857. He attended Yale College, and the University of California, and was graduated at Hastings College of the Law in 1881. He practiced for some two years at Oakland, and in 1883 opened an office with his father, Chas. A. Tuttle, at Auburn. He was elected district attorney of Placer county in 1886, and again in 1888. He has served one term as city attorney of Auburn, and has been connected with most of

the important litigation in Placer county since he entered on the practice. In the course of a large and successful business he has made somewhat a specialty of mining law, and is now a participant at the bar in all controversies of that character. Mr. Tuttle early interested himself in politics, and has on the stump and in conventions done much for the success of the Republican party.

WALDEMAR J. TUSKA.

Mr. Tuska was born in New York city in 1850, and was graduated from the Columbia Law School in May, 1869, with the degree of LL. B., which entitled him to admission to the bar of the State Supreme Court. He had not yet reached his majority, however, and the intervening period of over two years was passed in European travel, and in courses of study at the great universities of Paris, Berlin, and Vienna. At the age of 21 he returned home, and was at once admitted to practice in all the courts of New York State. He was at the metropolitan bar for about six years, when, becoming interested in mining business, he, in 1878, removed to Virginia City, Nevada. He very soon secured a good practice there.

In 1879-'80 Mr. Tuska was assistant district attorney of Storey county, Nevada, un-

der John H. Harris, by the latter's appointment, although the two gentlemen were of different politics. In 1880, he was president of the only Hancock (Democratic) club in Virginia City. He stumped the State in the Presidential campaign of that year, in company with Colonel George Flournoy, of San Francisco. Nevada went Democratic that year, and Mr. Tuska was elected to the assembly. He was made chairman of the judiciary and corporations committee. In 1882, he settled in San Francisco, and has ever since been very active at that bar.

In 1899 he was retained by the widow of Colonel Reinhold Richter, of the First California Volunteer Regiment (who was killed in action at Manila, August 4, 1898) in a suit to recover from the Knights of Pythias the

sum of $3,000 on a beneficiary certificate. The Supreme Lodge had refused to pay the benefit because Colonel Richter died in battle. After an arduous trial, the widow recovered judgment. Mr. Tuska was one of the counsel for Tax Collector Jos. H. Scott, of San Francisco, in the contest inaugurated by ex-Tax Collector Ed F. Sheehan, who claimed that, under the charter of 1898, Scott was not eligible.

CHARLES UDELL.

Charles Udell, a successful and prominent lawyer of Los Angeles, whose office is in the Homer Laughlin building, was born in Waushara county, Wisconsin, March 1, 1858, a son of Jared and Paulina (Stevens) Udell, who died during his childhood. His father belonged to an old historic family, which included Nicholas Udall (as the name was then spelled), the founder of the English drama, who was born in 1505 and died in 1556. Our subject's ancestors were among those who came to this country in the Mayflower.

To a limited extent Mr. Udell attended the public schools during his boyhood, but the greater part of his education has been acquired by self-culture. At the age of thirteen years, after the death of his parents, he started out to make his own way in the world, working in the summer at whatever he could find to do and attending school through the winter months as he found opportunity. Before locating permanently in California he had traveled all over the United States and made a trip around the world. In 1877 he assisted in the construction of a railroad in Mexico; later engaged in mining in the Black Hills; and in its early days visited Leadville, Col., where he also engaged in mining. He was on the frontier of Texas for a time and subsequently followed the sea for a number of years.

In 1884 Mr. Udell located in San Francisco. During all his years of travel he had read extensively, and he determined to make the practice of law his profession. Accordingly, in 1887 he settled at Los Angeles and entered the law office of Graves, O'Melveny & Shankland, with whom he studied for three years, being admitted to the bar in 1890. Opening an office, he engaged in practice with marked success.

In 1890 Mr. Udell married Miss Elizabeth C. Bewley, of Jenny Lind, California, and to them have been born three children, namely, Mildred, Kenneth and Dorothy. Mr. Udell is a member of the Masonic fraternity, Ancient Order of United Workmen, Woodmen of the World, Maccabees, and the Fraternal Brotherhood, and politically is a staunch supporter of the Republican party. In the fall of 1898 he was elected a member of the board of education of the city of Los Angeles, which position he held until business called him to Nome, Alaska, in April, 1900. Previous to his departure for Alaska, he formed a partnership with L. L. Shelton, an attorney-at-law, formerly of Galesburg, Ill., under the firm name of Udell & Shelton. Leaving his Los Angeles practice in the hands of his partner, he left Los Angeles on the Thrasher (the first vessel leaving for Alaska), April 21st, 1900. After spending about three months' time in Nome, he removed to Teller, Alaska, where he is now established in the practice of his profession.

R. H. F. VARIEL.

The president of the Bar Association of the city of Los Angeles, as might be said, no doubt, of the president of any bar association in a large city, represents the intelligence and honor of the profession, and has the unqualified respect not only of the bar but of the general community.

Robert Henry Fauntleroy Variel was born in Indiana on November 22, 1849. He comes of Revolutionary stock on both sides, his remote ancestors uniting Scotch-Irish and Scotch-English blood with a dash of Norman. The name Variel is French, and is not pronounced Vay-re-el, but as if spelled with two r's—Vair-re-el, with accent on first syllable. Mr. Variel's father, Joshua H., was a native of Maine. He went west before he was of age and settled in Indiana. There he was married to Miss Mary A. Casey, in 1848. R. H. F. Variel is the oldest of five children—two sons and three daughters. The father

R. H. F. Variel

brought his family across the plains in 1852, arriving in this State in September, and passing the winter of 1852-3—said to have been the severest ever known here—in a log cabin on a branch of the north fork of Yuba river, far removed from any other habitation. When spring came, they located at the mining camp of Camptonville, forty-eight miles northeast of Marysville.

The children received some instruction in a school that was, after a few years, opened in an old log house. For six months, during 1865-66, the oldest son, was placed in a better school. He returned home with a thirst for reading, and it happened that there were many good books in the settlement, including some standard works. These stimulated and fed the young man's mind and his appreciation of them influenced the parents to determine upon a professional career for him.

It happened, too, at that juncture, that there was in camp first, A. G. Drake, and then E. A. Davis, teachers of the local school. They were observant men and saw young Variel's natural qualities. A. G. Drake was especially a capable instructor and became principal of the Marysville High School, which position he held until his death. E. A. Davis was his teacher only for a short time. He is now the Superior Judge of Yuba and Sutter counties. These men gave him attentive instruction. At the age of eighteen the young student after examination, was given a second-grade school certificate entitling him to teach in Yuba county. He secured a school at once, and continued to teach, in various mining districts, for five years. The last two years of this time he taught in Plumas county, at Crescent Mills, under a first-grade State certificate granted him in 1870.

Mr. Variel presents to us next the unique instance of a man entering on the practice of law and the study of law at the same time. In 1873, he was elected district attorney of Plumas county, on the Republican ticket. He had never studied law. And he was the only man on the ticket who was elected. He took the office with the opening of the year 1874. How did he come out? Well, he was elected again at the end of his term; and again, and again, until five terms had passed, and he positively refused to stand again for the place.

Does this read like fiction? Well, there is the record, all open for examination, in the courthouse at Quincy.

He diligently studied law from the time he took the office; indeed, from the time he was nominated for it, and left the place after his long tenure, a well-informed and experienced lawyer.

That is the man who is now president of the Bar Association in the metropolis of the opposite end of the State.

Before making his long remove from north to south, Mr. Variel represented Plumas and Sierra counties in the assembly. It was at the session of 1887, when Hon. Stephen M. White was president pro tem of the senate, and Hon. W. H. Jordan was speaker of the assembly. Did we say that he left the office of district attorney a well-informed and experienced lawyer? This was the sentiment at the capital, when he took his seat in the assembly. He was given the chairmanship that of right belongs only to the best lawyer in the body—that of the judiciary committee.

When the legislature adjourned, Mr. Variel removed to Oakland, and opened a law office in San Francisco. His name is in only one San Francisco city directory, that for the year 1888. In January of that year, before that directory was issued, he had settled permanently in Los Angeles, as being not only a fine business center, but a place far more agreeable to his health. He soon formed a partnership with Stephen M. White, and became prominent at the bar of his new home city. He has an interesting family. His wife was Miss Caroline Vogel, to whom he was united in 1876. Mr. Variel has been practicing alone now for many years, except that his only brother, who is also a lawyer of fine ability, is associated with him informally. A suite of large and pleasant rooms close to the courthouse, and a great law library, occasion remark by all visitors.

In the History of the Los Angeles Chamber of Commerce (1900), of which body Mr. Variel has been a member since 1896, is a notice of him, from which we have not taken any of our facts set forth above, but the closing passages may fitly conclude our own sketch, as follows:

"Mr. Variel gives much time to public interests. In framing a city charter, as president of the Bar Association, as trustee of the State Normal School, as trustee of the law library, as a member of the Chamber of Commerce, and in many other ways, he shows his public spirit. He is of a marked social turn. He is a member of the Jonathan Club, of the Republican League, of the highest orders of Masonry, including the Mystic Shrine, of which he is high priest and prophet. He is an enthusiastic sportsman, a member of the Creel Club, of the Cerritos Gun Club, the Los Angeles Gun Club, and the Los Angeles Sharpshooters. He is an excellent reconteur, an interesting public speaker, and not infrequently he 'drops into poetry,' to the delight of his auditors."

A. P. VAN DUZER.

This well-known citizen of California was born in Delaware county, Ohio. He comes of good Knickerbocker stock, the Van Duzer family being one of the original colony from Holland who founded the city of New York. In the early part of the present century, Abraham Van Duzer, grandfather of A. P. Van Duzer, removed to Ohio, and from there the Rev. Jacob Van Duzer, his father, removed to Iowa in 1839. He was educated in the common schools of that state, and was one of the first students to enter Cornell College, at Mt. Vernon, Iowa, then known as the Iowa Conference Academy. At the age of twenty-one he came to California, locating in Siskiyou county, where he was elected district attorney in 1863. At the close of his term he went to New York city and graduated at the Columbia

Law College, and then returned to California. In 1868 Mr. Van Duzer removed from Northern California to San Francisco, where he has since lived. For eight years he had charge of the office of the United States attorney for California, as first assistant, being most of the time acting United States attorney. He resigned this position in 1882, and entered upon the general practice of the law in San Francisco. Mr. Van Duzer's first vote was cast

for Stephen A. Douglas for President. At the commencement of the Civil War he helped to organize the Republican party in Northern California, and always has been a prominent leader in that organization. At the bar and on the public platform he is always regarded as one of the leading orators of California.

L. H. VALENTINE.

Mr. Valentine, a prominent member of the bar of Los Angeles, and one of the Republican nominees for Superior Judge in the fall of 1900, is, like Mr. White and Mr. Hunsaker, bar leaders of that city, a native of California. He was born at historic Coloma, in November, 1859. He was educated in the public schools, and taught school himself from 1878 to 1884. For the last two years of this period he was principal of the public schools of Placerville, and also a member of the county board of education. He resigned both of these positions to enter Hastings College of the Law. Graduating from that college in 1887, with the honors of his class, he immediately located at Los Angeles, and has always since resided there, engaged in the practice of law.

Mr. Valentine has made, in addition to a high reputation as a lawyer, an excellent record as a legislator. He has lately served in the assembly for two sessions. He was, as first stated, one of the Republican candidates for Superior Judge in 1900. His defeat was it is generally conceded, due to the unfortunate position of his name on the ballot used in the election. Mr. Valentine is well known in the city, and equally as popular with the voters —especially Republicans—as either of the other gentlemen who were candidates; but his name was so placed upon the ticket as to be misleading to a very large number of voters, who thought that only one judge was to be elected; and at the count it was discovered that in nearly every precinct there were many straight Republican tickets upon which the first name alone was stamped for Supreme Judge, full term. Mr. Valentine's name was thus overlooked on enough straight Republican ballots to have elected him.

When Mr. Valentine received his nomination for Superior Judge, a leading Los Angeles daily, in a notice of his life, dwelt upon his course in the legislature, as follows:

"In the session of 1897 he soon came to be recognized as one of the leaders of the Republican majority in the assembly. Prior to the session of 1899 he was prominently mentioned for speaker of the assembly, and had most encouraging assurances of election, but withdrew his name as a candidate for that position, fearing that his candidacy would militate against the chances of his friend and fellow-townsman, Hon. R. N. Bulla, for election to the United States senate. Mr. Valentine felt that the people at this end of the State were more interested in securing a United States senator from the south than in his election as speaker.

"In the session of 1899, when Speaker Wright was deposed, Mr. Valentine was tendered the position of speaker almost unanimously by the Republican majority, but declined for the reason that he was then chairman of the ways and means committee, by

far the most important committee of the house, and which gave him a position of greater power and prestige than he could gain at the time as speaker; he had the work of his committee well in hand and to leave it at that time for the speakership would probably have resulted in the failure of some very important measures affecting the finances of the State, which he was anxious to complete, notably,

a bill introduced by him regulating the State printing and the expenses of the State printing office. He secured the passage of this bill and it has resulted in a saving of over $150,000 to the State for the two fiscal years of 1899 to 1901. As chairman of the ways and means committee it devolved upon him to prepare the general appropriation bill, which provides for the support of the State government and State institutions for the next ensuing two fiscal years. The general appropriation bill prepared and introduced by Mr. Valentine was for $286,000 less than that providing for the last two years of Governor Budd's administration, and was a direct saving to the people of the State of that amount. The bill passed both houses of the legislature with changes amounting to less than $10,000, and was signed by the Governor on the day it reached him, without the veto of a single item, a record that has never been equaled, so we are informed, by any other appropriation bill.

"Mr. Valentine also was the author and secured the passage of a bill requiring contractors for street improvements to furnish a bond in half the amount of their contract, for the benefit of the laborers and material men who furnish labor and material in the construction of such improvements. Prior to the passage of this bill laborers and material men had no security whatever for the payment of their labor and material, and it very often happened that the poor laborer was beaten out of his honest wages by unscrupulous contractors. This bill practically guarantees them their pay.

"Mr. Valentine is an able and industrious lawyer, and stands well at the bar of this county."

M. S. WAHRHAFTIG.

Mr. Wahrhaftig came to the United States in 1882 from the land of the Czar. He was one of many thousands who left that country in that year to escape intolerable race prejudice and oppression. He had been well educated, but had no acquaintance with the English tongue. Some years after his arrival in America he located in Tulare county, and engaged in farming. Thence he removed to a small fruit tract near Sacramento city. The agricultural depression of the early nineties drove him into the capital city in search of manual employments. He found work of different kinds and was usually occupied. It was during this period that, by a course of reading, on which his earnest mind and memory took a firm hold, he acquired such legal knowledge as qualified him for an examination before the Supreme Court of the State. That tribunal admitted him to the bar, in August, 1897—the first Russian Jew (it was so announced by a Jewish paper at the time) honored with the title of attorney and counsellor at law on the Pacific coast.

Mr. Wahrhaftig is now about forty-one years old and speaks English fluently. He began the practice at Sacramento and has remained there, quite gratified with the encouragement he has met and the business that has come to him. He is a public-spirited man, and is active in the Masonic, Odd Fellows, I. O. B. B., and several other fraternal orders. He is single, but has the company of his mother, who is in excellent health and strength at the age of eighty-two years.

J. F. WATERMAN.

Jesse F. Waterman was born in Maine, in 1858. His early life was spent on a farm. He attended the district school and was graduated from Bowdoin College, at Brunswick, Maine, in 1885, with the degree of A. B. He received the degree of LL. B. from Boston University Law School in 1887. He was admitted to the Suffolk bar in the same year. He came to California and settled at Los Angeles in the latter part of that year; also, has practiced there since that time. His practice is general—he has no specialty.

Mr. Waterman is a married man, but has no children.

RUSSELL J. WATERS.

Russell Judson Waters, who was representative in the Fifty-sixth congress from the Sixth district, comprising Los Angeles, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura counties, was born at Halifax, Vermont, June 6, 1843. He was taken at the age of four years to Franklin county, Massachusetts, where his early life was spent partly on a farm and partly in a factory. He attended the district schools at intervals between his work. He learned the machinist's trade at Sherburne Falls, Massachusetts; afterwards taught school at Charlemont Center, Massachusetts. Entering Franklin Institute in the same state, he was duly graduated and was later there engaged as professor of Latin and mathematics. Removing to Chicago, he studied law in the office of Rich & Waterman, and was admitted to the bar in 1863. He practiced in Chicago until 1886, when he came to California for his health, but his stay ran into a permanent residence, and he found congenial employment in materially aiding to develop the southern part of the State. At first locating at Redlands, he removed to Los Angeles in 1894. Since that time he has been a director of the Columbia Savings Bank, president of the Pasadena Consolidated Gas Company, president of the Los Angeles Directory Company, treasurer of the Los Angeles Chamber of Commerce, vice-president of the Citizens' Bank, and connected with many other public institutions.

In 1898 Mr. Waters was unanimously nominated by the Republican convention of his district for congress, and was elected, receiving 24,050 votes, to 20,508 for C. H. Barlow, Fusionist, and 1,132 for J. T. Van Rensselaer, Prohibitionist. He declined to run for the office in 1900, or to let his name go before the convention of his party.

Mr. Waters was united in marriage in 1869 with Mary Adelaide Ballard, daughter of Hon.

Jonathan Ballard, of Charlemont, Massachusetts, and has four children.

This sketch is taken substantially from the Official Directory of the Fifty-sixth congress.

JAMES A. WAYMIRE.

James A. Waymire, Judge of the Superior Court, San Francisco, in 1882, was born on December 9, 1842, in Buchanan county, Missouri. His father, Stephen K. Waymire, was a carpenter and a farmer, owning 160 acres of land on the Missouri River, near a small village. In 1843 the village was laid out into the town of St. Joseph, which now has become a flourishing city. Stately buildings cover the old Waymire farm. Judge Waymire's paternal ancestors came from Germany, near Saxe-Weimar, about the year 1732, and settled in Pennsylvania. Subsequently a portion of them removed to North Carolina, and afterwards, in obedience to the law of emigration, drifted westward by way of Indiana and Ohio to Missouri. His mother, Mahala E. Gilmore, was of Irish origin. His maternal grandfather, James Gilmore, was a Virginian by birth, but became a pioneer of Kentucky and Missouri. On both sides there were representatives of the family in the wars of the Revolution and of 1812, and also in the Indian wars. In 1808 one branch of the Waymire family established a settlement, near Dayton, Ohio, where their descendants still live, numbering several hundred.

In 1845 Stephen K. Waymire started overland to Oregon with his family in a company of which his brothers, Frederick and John, with their families, were members. Oregon was then an almost unknown land, and there was not even an established wagon road connecting it with the inhabited portion of the states. After crossing the Missouri River, Stephen K. was thrown from his horse and died from injuries caused by the fall. His widow, with her boy, James, returned to her father, who resided in Buchanan county, Missouri. Frederick and John became successful as pioneer farmers and business men in Oregon. The former was an active member of several sessions of the legislature and of the convention that framed the State constitution in 1857. He died in 1872. John built the first wharf at Portland, and became a merchant at Dallas, Polk county.

In 1852 James Gilmore with his family including his daughter, the widow Waymire, and her son James, our subject, went overland to Oregon. The immigrants formed a settlement near Roseburg, in what afterwards became Douglas county, Oregon. Schools and churches were established as necessary accompaniments of the colony.

At fourteen years of age James was quite clever as a writer of both prose and verse. At seventeen he had acquired a fair knowledge of mathematics and Latin with the rudiments of Greek, and had learned phonography. After reaching fourteen years of age he began making his own way in the world. His first earnings were by chopping cordwood. At fifteen he was a full hand in the harvest, in making rails and in other farm work. The next year, having acquired a horse and saddle, he obtained employment during the summer at $2.50 per day in driving cattle to Washington Territory. In 1860 before he was eighteen, he taught school.

This being the first presidential election at which the people of Oregon were privileged to vote, and on account of the slavery excitement, great interest was felt. Young Waymire, though not old enough to vote, made speeches for Lincoln, having become a zealous Republican by his historical studies and from reading the Douglas-Lincoln speeches, lectures of Channing, the *Tribune*, the proceedings of congress, etc. Most of his relatives were pro-slavery in their views. In September and October he assisted in reporting the proceedings of the Oregon legislature for the *Oregonian* and other newspapers. This was the session at which Colonel E. D. Baker was elected United States senator after an exciting contest. The young reporter made the acquaintance of Baker, and became a great admirer of his genius. It was at Colonel Baker's suggestion that he resolved to study law, and upon the adjournment of the legislature he set about it by taking "Hoffman's Legal Studies" as a guide.

When the Civil War opened, in 1861, Waymire might have obtained a commission, but knowing his ignorance of military matters he preferred to learn by experience. Adjourning his school, he invested part of the money intended for college expenses in a horse and equipments, and enlisted as a private soldier on his nineteenth birthday. His company, with two others, were sent on an expedition, during the year 1862, under command of Colonel R. F. Maury, to protect the frontiers and the overland immigration. In February, 1863, he was promoted to corporal. On April 23d he was commissioned as second lieutenant. His military service was quite eventful. It was all rendered in campaigns against the Indians in Oregon, Washington and Idaho.

After the fall of Atlanta and the successful march to the sea, it became evident that the war was so far ended that there was no longer any danger on the Pacific Coast. Thereupon Lieutenant Waymire tendered his resignation.

The young soldier, turning away from arms, became private secretary to the Governor of Oregon and devoted all his spare time to the study of the law.

In February, 1867, he was tendered a commission as second lieutenant in the First United States Cavalry. Alaska had just been acquired and the army had been increased. It was a common opinion that in future it would be necessary to maintain a large regular army. Under such a policy promotion would be rapid. With these expectations Waymire accepted the commission and came to San Francisco to be examined. The board gave him a thorough examination, doubting his capacity on account of his youthful appearance. The new lieutenant was approved, and was assigned to M Company, stationed at Camp Lyon, Idaho Territory. He joined it at once and was assigned

James A. Waymire

to duty as quartermaster and commissary of the post. The Indians were very troublesome, and the troops were actively engaged against them, but Lieutenant Waymire's duties kept him at the post. Under his management the expenses of the post were greatly reduced. In May, 1869, the company was ordered to Arizona, and about the same time Waymire was promoted to first lieutenant. But congress had begun to reduce the army, and seeing little prospect of attaining any considerable rank during an ordinary lifetime, and knowing that every year he remained in the army would make it more difficult to live outside of it, he resolved to take final leave of it and to enter upon the practice of the law. Accordingly, he tendered his resignation, and it was accepted in September, 1869. Altogether, he had been in the military service about five years and a half.

Shortly after this he resumed his law studies at Salem, Oregon, and at the request of James Anthony, one of the proprietors of the old Sacramento *Union*, he spent the winter of 1869-70, reporting the proceedings of the senate of California for that paper. In September, 1870, he was admitted to the bar by the Supreme Court of Oregon, after the usual examinations in open court.

Again yielding to the call of the Union he reported the senate proceedings at Sacramento during the session of 1871-72. This was the session at which the Codes were adopted and the change afforded a good time for beginning law practice in this State.

In May, 1872, the judges of the California Supreme Court appointed him phonographic reporter of that tribunal. In this position he served for three years. During that time he heard and took notes of all the arguments made before the court. He analyzed every opinion and prepared reports of all the cases decided. These were subsequently embodied in the volumes of Reports from Nos. 41 to 49.

In 1873 Mr. Waymire delivered the oration upon Memorial Day, at Sacramento, which attracted much attention.

Mr. Waymire removed to San Francisco in July, 1874, and has been engaged in the practice of the law since May, 1875. His practice has been of a general character, embracing a wide range of important law points. In the preparation of his cases he is painstaking and industrious. Whenever the importance of the questions involved has justified the labor, he has made it a practice to write careful briefs and have them printed. He has been engaged in many important cases.

Judge Waymire went upon the bench of the Superior Court, by the appointment of Governor Perkins, October 17, 1881, to fill a vacancy. His appointment was greeted with the general approval of the bar.

His industry on the bench was generally remarked. The patience with which he would weigh masses of evidence and the subtlety which he would bring to the examination of nice points of law, were very pleasing, especially to lawyers of large practice. In his fourteen months on the bench he rendered eleven hundred opinions, a large proportion being on demurrer, but all on questions which counsel had made the subject of argument. Of thirty appeals from his judgments only three were sustained.

At the end of Judge Waymire's short term as Superior Judge he was nominated by his party for re-election. The Republicans were divided in San Francisco at that time on local issues, but he was presented for re-election by both factions and unanimously. He was defeated by a small majority, owing to a change in the German vote. In consequence of an agitation of the Sunday law question, that vote seemed to be cast almost solidly for the Democratic nominees, State and local, political and judicial, in 1882. It was in that campaign that Charles Kohler, the large producer of native wines and president of the League of Freedom, went over to the Democracy from the Republicans with a large following. Mr. Kohler, however, desired to see Judge Waymire re-elected. The lawyers supported the Judge with general concurrence, Hall McAllister and other bar leaders publishing a card in his behalf. Although defeated, he received the highest vote of all the Republican candidates in that contest, and ran over 5,000 votes ahead of his party candidate for Governor.

Resuming his profession, he expected that the work of building up a business anew would be the engagement of years. But hardly a year had passed before his practice was so extensive that in comparison with it, his business before going on the bench was small.

In February, 1883, Judge Waymire was elected by the encampment of the Grand Army of the Republic a member of the Veterans' Home Association of California for a term of five years. In March of the same year he was chosen a director of the association named, and served as chairman of the executive committee until March, 1885, when he was elected president of the association. He was eight times re-elected as president. It was at his suggestion that the Federal government was memorialized to establish a branch of the National Soldiers' Home on the Pacific Coast. He was appointed to urge the enactment of the necessary law to that end. After several years of correspondence with members of the board of managers, and with senators and representatives in congress, he had the satisfaction of seeing a law passed which appropriated $150,000 to build the branch home. In November, 1887, the site was selected near Santa Monica. He was also a delegate to the National encampment of the Grand Army, held at Portland, Maine, in June, 1885.

In 1890 President Harrison appointed Judge Waymire a member of the board of visitors to West Point, in the proceedings of which he took great interest. He was nominated on the Republican ticket in 1892 as a Presidential elector and canvassed the State for Benjamin Harrison. He served a term as assemblyman in the legislature of 1895, was re-elected and served at the session of 1897. In both sessions he took a leading part, especially as a member of the judiciary committee, of which he was chairman at the session of 1897. He

was urged to be a candidate for United States Senator at the session last mentioned, but declined for the reason that he had promised to support Senator Perkins.

Having become interested in the bonds and lands of Turlock Irrigation district in Stanislaus and Merced counties, he was forced by his own interest to undertake the completion of the work of that great irrigation system. The contractors had failed to carry out their undertaking for want of money, the district being unable to sell its bonds, on account of adverse litigation questioning the validity of the irrigation laws. The work was only half accomplished, and had cost $710,000. In this condition, Judge Waymire took it up in June, 1895, and after a struggle of five years, finished it, thereby completing the most important system of irrigation in California and one of the most valuable in the world. The district covers 176,000 acres of fertile land in Stanislaus and Merced counties. It was organized in June, 1887, and began work a few months later. The water supply is obtained from the Tuolumne River, and in order to divert the water from the river it is elevated by a dam of stone laid in cement, 129 feet high and 360 feet long. It flows from the river into a tunnel 600 feet long, cut in solid rock. Thence it runs for two miles in a canal cut in rock and through a series of flumes and dep cuts to Dry Creek, which is utilized as a part of the canal for a mile and a half, a concrete dam 400 feet long and twenty-seven feet long raising the waters so as to form a lake a mile long and a half-mile wide. From this lake the water flows into an earth canal seventy feet wide, by which it is carried to the crossing of Dry Creek a mile below. Dry Creek is crossed in a flume 60 feet high and 500 feet long. The lower end of the flume enters a tunnel, through which the water flows into an artificial basin, thence through another tunnel into another basin and through a third tunnel into a third basin. Thence it is carried through a deep cut into a wide canal, across another creek by a flume 40 feet high and 20 feet wide. After passing this point a canal 70 feet wide carries the water through the foothills to the district. The total distance of this complicated work is about twenty miles. The supply of water is 1500 cubic feet, or 75,000 miners inches—enough to irrigate 375,000 acres. It is distributed over the lands of the district, by a system of lateral canals aggregating 120 miles in length and varying in width from 20 to 60 feet. This work consumed about two million feet of lumber and required the removal of more than two million cubic yards of rock and earth.

In carrying out this enterprise it was necessary to look after the litigation as well as to finance it and superintend the construction. The statutes of the State authorized the bringing of a special proceeding to determine the validity of the organization of a district—known as "confirmation proceedings"—as the purpose was to obtain a decree of court confirming and establishing the validity of the district by decreeing that it had been organized as required by law. Such a proceeding had been taken to test the validity of Modesto district, which adjoins the Turlock. The Superior Court, after a trial, gave judgment in favor of the district; an appeal was taken to the Supreme Court of the State, and after an exhaustive argument, that court confirmed the judgment. The opposition were not satisfied and took an appeal to the Supreme Court of the United States. The case was ready for decision early in 1894, but Senator Stewart obtained leave to file an elaborate brief and caused the submission to be set aside. Before it was decided, Judge Ross of the United States Circuit Court decided in the case of the Fallbrook Irrigation district that the law for the organization of irrigation districts was unconstitutional, and that consequently the districts formed under it were void. This case, of course, if allowed to stand, would have destroyed the Turlock Irrigation district, along with all the others. Judge Waymire succeded in getting the leading friends of the irrigation system, including the principal bondholders, together, and raised funds, counsel fees and other expenditures. The Fallbrook case was appealed, and the two cases were set for argument together. Ex-Chief Justice A. L. Rhodes of California and ex-United States Circuit Judge John M. Dillon of New York were employed by the organization of bondholders. Judge Waymire himself retained ex-President Harrison. He also prepared a comprehensive opinion reviewing the opinion of Judge Ross. It was of great assistance to counsel for the district in the argument of the cause. He spent some time in consultation with Judge Dillon and General Harrison. The cases came up for hearing in February, 1896, and attracted general attention all over the country. In November of the same year the court decided the cases, fully sustaining the constitutionality of the law, reversing Judge Ross in the Fallbrook case, and confirming the Supreme Court in the Modesto case. This was supposed to settle the litigation, but a few weeks later the Supreme Court of the State rendered a decision in another case (Hughson vs. Graw) that made the situation worse than ever. A suit had been brought in Stanislaus county to enjoin the sale of land for an assessment levied to pay interest on the bonds of Turlock Irrigation district. The complaint alleged all kinds of irregularities, including fraud in the issue of the bonds. Instead of going to trial and disproving the allegations, as he might easily have done, the attorney for the district filed a demurrer and rested his case on the point that an injunction would not lie to restrain the collection of an assessment, as it was of the nature of a tax. The court sustained the demurrer, and the plaintiff appealed, going to the Supreme Court with a record charging fraud and gross irregularities, which, of course, were admitted by the demurrer. With this record before it, the court reversed the judgment, holding that a sale of land to pay an assessment levied for the interest on bonds issued under such circumstances could be enjoined. This put the bonds under a cloud which could not soon be removed, and made it difficult to prosecute any work for

an irrigation district. In fact, work on all of them came to a standstill, except in Turlock. Here the persistence and energy of the contractor prevailed over all difficulties. A later decision of the Supreme Court, rendered in the year 1897, in the case of the Central Irrigation district, held that district to have been illegally formed for want of sufficient notice to the board of supervisors of the hearing of the petition for the formation of the district. Applications were made to the attorney general for leave to bring actions to dissolve the Modesto and Turlock Irrigation districts. As to the first district, the application was granted, but as to the second, it was refused because of the arguments presented by Judge Waymire. Finally, the tide turned. Judge Welborn of the United States Circuit Court held that the two years' statute of limitations protected the districts from attack. Soon afterwards the State Supreme Court in the Linda Vista case decided that where a decree had been made by a Superior Court confirming the organization of a district it was final. Then came the decisions by Judge Morrow—the United States Circuit Court holding that the districts are protected by the two years' statute, and that the bonds issued by Modesto district are legal and must be paid. This decision indicates the probable end of a litigation that has cost the State many millions of dollars, retarded its development and brought into disrepute a class of securities which should be in favor everywhere.

Early in 1896 Judge Waymire was requested by the friends of Hon. William McKinley to undertake the work of obtaining the delegates for the Pacific Coast states to the Republican National convention for McKinley for President. The task was not an easy one, as Speaker Reed was a candidate, and having lived in the State, was in favor, especially with such strong men as those in control of the railroads. Senator Allison also was a candidate, and had a powerful following, with characteristic zeal and industry. However, Judge Waymire soon formed an organization, or rather a number of organizations, through which public opinion was concentrated so strongly in favor of McKinley, that the several State conventions were forced to instruct their delegates to support him. Afterwards, during the campaign, he gave his entire time and undivided attention to the work of carrying the Pacific Coast states, contributing freely of his own funds to the expenses of the campaign. After the election he asked for no office for himself, but many friends all over the coast urged his appointment to the Cabinet.

Judge Waymire has been and is interested in mining, as well as in farming. He owns a good gold mine in the Mother Lode, near Jamestown, and the controlling interest in a gold and copper mine in Placer county, which is developing into a great property. But his chief enjoyment is derived from his library, his family and his friends, whom he delights to entertain.

In addition to his professional success, Judge Waymire has made some fortunate ventures in country lands and San Francisco and Alameda real estate. His home is in the town of Alameda, where he has a fine dwelling in the midst of four acres of land attractively improved. Upon this he has expended more than $30,000. He has a wife, two sons and two daughters, having married at Lafayette, Oregon, on June 22, 1865, Miss Virginia Ann Chrisman, a Missouri lady, who, like her husband, is of German ancestry. His son, Charles F. Waymire, resides with his wife and son at Sacramento. His daughter, Miss Edna, is a graduate of the State University; Miss Maude, being of delicate health, was trained under private tutors. Both daughters are of literary taste. Rudolph, the youngest child, is ambitious to be an officer of the navy.

J. H. G. WEAVER.

J. H. G. Weaver was born on a farm near Quincy, Michigan, where he grew to manhood. He attended the common district schools in the winter and worked on the farm in the summer until he was eighteen years of age, when he enlisted as a volunteer in the War of the Rebellion. He served in Company I, Eleventh regiment, Michigan Volunteer infantry, from the time he enlisted until the close of the war.

On returning home he again worked on the farm in summer and attended the high schools of Quincy and Coldwater in the winter until the fall of 1868, when he entered Hillsdale College, located at Hillsdale, Mich., from which he was graduated in June, 1872, with the degree of B. S. In the fall of that year he entered the law department of the Michigan University, from which he was graduated in 1874 with the degree of LL. B. His education was obtained through his own individual efforts—by working on the farm and teaching school.

After graduation from the law department of the Michigan University he went to Kansas, where he taught the Union high school of LaCygne for two years.

In the fall of 1879 Mr. Weaver married Flora Williams, of Putnam county, Indiana; they were married at her home, Rose Lawn, in that county.

In the spring of 1876 they moved to California, taking up their residence in Humboldt county, where they have resided ever since. The first year of their residence here, Mr. Weaver taught school, holding the position of principal of the Arcata schools. Since then he has followed his profession, and he now ranks as one of the leading members of the Humboldt bar.

In 1882 he was elected a member of the State legislature. He was re-elected in 1884 and declined the nomination for State senator in 1886. He has also held the office of city attorney for the city of Eureka.

He is a member of Col. Whipple Post No. 40, G. A. R., having been its commander twice. His amiable wife has been president of the corps auxiliary to that post.

Mr. Weaver has two children, Charlotte R.

and Bonita, aged respectively twenty-two and nineteen years. Both are graduates of the Eureka high school, and Bonita is now in the social science course of the University of California.

In politics Mr. Weaver has always been a Republican. He is a high tariff, gold standard, general expansionist Republican—fully in accord with the policy of the present administration. He is a man of positive convictions, and possesses the courage of his convictions. There has been but one national or State campaign since he has been a resident of California in which he did not take the stump in behalf of his party. He is a forcible and entertaining speaker.

FRANK R. WEHE.

Frank R. Wehe was born at Downieville, Sierra county, California, on the 16th day of January, 1855, in a miner's log cabin of one room and a shed. Babies were scarce then, and on the day of his birth it was requested that he be held up to the only window of the cabin, so that about one hundred miners might file past and see him.

He left the public school at the age of twelve to work in a mine. He went to San Francisco in 1872 and worked at the Oakland Ferry, tending a fruit store. Afterwards he was office boy for Provines & Johnson, lawyers of San Francisco. He returned to Downieville in 1878, and mined a while, and studied law. He was admitted to practice in the Superior Court in 1882. The same year he entered the office of Judge P. Vanclief, at Downieville, and remained with him until the Judge was appointed commissioner of the Supreme Court. The fatherly kindness of the old Judge for the young briefless lawyer did much to shape the latter's future, and Mr. Wehe gives that association credit for his later success. He was admitted to the bar of the Supreme Court of the State in 1890.

In 1882, 1884, 1886 and 1888 Mr. Wehe ran on the Democratic ticket, in the Republican county of Sierra, for district attorney, being defeated each time. In 1890 he ran on the Democratic ticket for the assembly in the district then composed of the counties of Plumas and Sierra. The Republican majority was over four hundred. He was again defeated, but this time by only forty-two votes, carrying Sierra county by one hundred and twenty-two majority. In 1892 he was elected district attorney of Sierra county by 562 majority, the largest majority ever given a candidate for that office in that county. He was re-elected in 1894, and again in 1898, being still an incumbent of the office.

In 1882 he married Miss Helen M. Hill, also a native of Downieville, and they have four children. Mrs. Wehe is of a social disposition, and their cosy home is the scene of many pleasant gatherings.

Mr. Wehe has been leading counsel on one side or the other in nearly every case of any importance tried in Sierra county for the last ten years, and now enjoys a large practice.

In 1897 he was elected president of the Sierra County Miners' Association, and has been re-elected each year since.

He has always been an enthusiastic Democrat, but also enjoys to a large degree the esteem of the leading Republicans of his county.

M. A. WHEATON.

Milton A. Wheaton of San Francisco, who has been so distinguished in patent cases for thirty years, was born in Oneida county, New York, November 14, 1830. He is of an old American family. His father was a wagon-maker, and had the reputation of being able to make anything in the way of mechanical construction. His genius in this line became the inheritance of the son, as has been repeatedly evidenced by the latter's masterful grasp of patent cases. The father died when the son was less than eight years of age.

The son went to school in his native county, and entered Hamilton College, which is there located, in the year 1851. He had maintained himself by working on dairy farms since he was twelve years old, becoming familiar with the care of cattle, milking, the manufacture of butter and several kinds of cheese. Later he worked in a factory, making cheese boxes, where he became familiar with the use of machinery, and mechanical hand tools. In winter he was always at school, and at all times he was eager for books, possessed by the idea of getting an education. He withdrew from Hamilton College, after less than two years of study, to accompany an uncle to California.

He arrived in San Francisco, by way of Panama, on May 5, 1853. He went at once into Butte county. The first work he did was chopping wood for a steam mill. Near the mill stood a number of dead enormous sugar-pine trees. These he felled and cut up, at four dollars a cord. Out of the top of one of these pines he got twenty-one cords. In the next summer (1854) he did teaming and freighting, and hauled lumber. In the fall of 1855 he commenced the study of law at Sac-

Milton A. Wheaton

ramento, in the office of Carter & Hartley, and on the 15th day of September, 1856, he was, after an examination, admitted to the bar by the Supreme Court. In January, 1857, he began practice in Suisun, Solano county. For eight years he made his home there in the heart of a very fertile section of the State, where land titles were generally unsettled, and the practice was very remunerative to good lawyers. He had no bad habits. He loved work and study. His cast of mind was practical and serious. In Solano and its neighboring counties in California, he acquired, in his younger days, a local reputation of being a master of land law, as he afterwards acquired a reputation as a master of patent law, that reached across the continent. Mr. Wheaton has been called upon to try many patent cases in the cities of Boston, New York, Chicago and St. Louis, and during the twenty-eight years last past he has argued numerous cases in the United States Supreme Court at Washington.

California's highest Court of Appeals is its Supreme Court. It is not so in New York. Mr. Wheaton's first case in the Supreme Court of this State was that of the People vs. Jersey, reported in the 18th Cal. Reports, at page 337. Jersey had hired a horse and saddle at a livery stable in Suisun City, and did not return it. He was indicted for grand larceny, and was convicted in the lower court. Mr. Wheaton appealed the case to the Supreme Court and argued that as the original taking of the horse and saddle was lawful, the crime of larceny was not committed. The Supreme Court decided in accordance with Mr. Wheaton's argument, and reversed the judgment. Mr. Wheaton subsequently succeeded in obtaining the full discharge of his client.

In Hidden vs. Jordan, 21 Cal. 92, Mr. Wheaton was the attorney for Hidden. The action was brought to compel the defendant to execute a written conveyance of land in Solano county, California, in accordance with a verbal agreement made between the parties. The land was owned by third parties, and Jordan had agreed with Hidden to purchase the legal title, pay a part of the purchase money therefor, Hidden furnishing the remainder, and to convey the land to Hidden upon the later repaying the advances made by Jordan with interest thereon. Jordan purchased the land as agreed, and took the title in his own name, and then refused to carry out his oral agreement to convey the land to Hidden, claiming that, as the agreement with Hidden related to land, and was not in writing, it was void in law and could not be enforced. The suit involved the subject of resulting trusts, and also the extent to which verbal agreements for the conveyance of real estate could be enforced in equity. Mr. Wheaton was successful in the suit, and this decision of the Supreme Court has ever since been a leading authority in the west upon the subject of trusts in real estate, and the extent to which a court of equity will compel the specific performance of oral agreements to convey real estate. From and after the decisions above mentioned the reports of the Supreme Court of California abound with cases argued by Mr. Wheaton in that high tribunal. Many of them involved new and interesting questions that naturally arose in a new country in which gold mines had been the attraction that drew the bulk of its first immigration, and in which its later but closely following industries included agriculture, manufactures and the whole range of subjects belonging to the business world. At the commencement, in California, the conditions and subjects of business were to a great extent new, and naturally many of the subject-matters of litigation were novel and without precedents for guidance. In solving the new legal problems that were constantly arising, and in bringing the unsettled chaotic uncertainties that attend the rights of property within permanent, fixed and established rules, which made them secure and safe to deal in, Mr. Wheaton did his full share.

He relates the circumstances that took place in the Supreme Court in the case of Ellis vs. Jeans and Longs—reported in 26 Cal. Reports, page 272—as presenting one of the most perilous and excitedly interesting positions in which he ever found any of his cases placed. The suit was ejectment. It was commenced in 1856. Jeans was only a nominal party, not claiming any rights in the land. The real contest was between Ellis and the Longs, both of which parties claimed to own the land. Vaca was a Mexican grantee of the land, and made a deed of it to the Pattens and Lyon in 1849, while California was yet a territory, and Pattens and Lyon deeded the land to the Longs in 1851.

In August, 1850, Vaca made a second deed of the land to McDaniel. McDaniel deeded a half interest to Mizner; Mizner and McDaniel deeded to Basye, and Basye deeded to Ellis. The Longs claimed the land because they held a straight chain of title to it from Vaca. Ellis claimed to own the land as an innocent purchaser for a valuable consideration because Vaca's deed to Pattens and Lyon had not been recorded in the county recorder's office when Vaca made the second deed to McDaniel.

When the action was commenced Ellis was in possession of one hundred and eighty acres of the land and the Longs were in possession of the remaining three hundred and twenty acres, the entire tract sued for being five hundred acres.

The Longs employed John Currey, one of the ablest lawyers in California, and afterwards one of its most eminent jurists, to defend the suit. Prior to 1860 the case had been twice tried, twice appealed and twice reversed on appeal. When it came on for its next trial Mr. Wheaton was joined with Judge Currey in defending the suit. The trial resulted in a judgment for the plaintiff Ellis.

After the trial and before the case was appealed, Currey was elected one of the Justices of the Supreme Court, and from that time forward could not, and did not, take any further part in defending the suit, which was left entirely in the hands of Mr. Wheaton.

The main question of fact to be determined in the case was whether or not Mizner and

McDaniel had notice of Vaca's deed to the Pattens and Lyon when they took their subsequent conveyance from Vaca. If they had such notice their own deed would be void, but if they did not have such notice, they could hold the land as innocent purchasers for a valuable consideration, as Vaca's deed to Pattens and Lyon had not been recorded in the county recorder's office when Vaca made his second deed to Mizner and McDaniel. The lower court found as a fact, and decided, that Mizner and McDaniel did not have notice of the said deed to Pattens and Lyon, and entered judgment for the plaintiff Ellis for the possession of the land, together with a judgment for five thousand dollars damages for rents and profits for the adverse use of the land by the defendants.

In this state of affairs Mr. Wheaton made up a statement and made a motion for a new trial, which motion the court denied. Mr. Wheaton then appealed to the Supreme Court from the judgment, and also from the order made denying his motion for a new trial.

On the issue of fact as to whether or not Mizner and McDaniel had notice of Vaca's prior conveyance the evidence was conflicting, and the Supreme Court refused to reverse the judgment on that ground. Mr. Wheaton had, however, made the point that the lower court had assessed damages for the use and occupation by the defendants for all of the land sued for, while the plaintiff had himself had possession of one hundred and eighty acres of the land, and that the defendants ought not to be compelled to pay the plaintiff for the use of the land which he had himself had the entire use of, and which the defendants had not had any use of. The Supreme Court took Mr. Wheaton's view of this point, and reversed the judgment accordingly, ordering the case back to the lower court for a new trial.

It was at this point that there began a close and exciting struggle that made a draft upon the best intelligence and keenest wits of the attorneys upon both sides of the case.

While it was an important object for the defendants to get rid of the judgment for damages, the main purpose of the contest was to hold the land. If the order of the Supreme Court granting a new trial could be maintained it carried the whole case back to the lower court and the defendants could make another fight for the ownership of the land. If, however, the plaintiff could have his judgment for the ownership of the land affirmed he could well afford to lose his judgment for damages.

The plaintiff's counsel accordingly came into the Supreme Court and asked the court to modify the judgment appealed from by striking out of it the entire damages, and then affirm the judgment giving the land to the plaintiff. The Supreme Court was willing to do this, if the record was in a shape to make it feasible to do so. Mr. Wheaton opposed this motion upon the ground that ejectment was an action that tried the right of possession only; that in ejectment the plaintiff must not only show title in himself, but he must also show that the defendant was in possession when the suit was commenced, or he could not recover; that the record showed that Ellis was in possession of about one hundred and eighty acres of the land that the Longs claimed to be the owners of, and that their title could not be litigated as to the part of the land so in the possession of the plaintiff. The Supreme Court decided that Mr. Wheaton's position was in accordance with the law of ejectment, and therefore refused to grant the plaintiff's motion.

The plaintiff's counsel then came in and repeated their offer to have all of the damages remitted and further offered that the part of the land possessed by the plaintiff should be released from the judgment, and have the judgment affirmed for the plaintiff as to the land which the Longs had the possession of. This the Supreme Court was also willing to do, but Mr. Wheaton then presented the further point that there was not a sufficient description in the record to make a correct and exact identification of the dividing line that separated the two tracts of land which had been held by the respective parties. The record was critically examined and the Supreme Court decided that Mr. Wheaton was right in this contention also. The plaintiff's counsel then came in and asked to have an exact survey made by any surveyor which the court might appoint, so that the exact description of the two tracts of land should be definitely determined, the separation of the two tracts made and the plaintiff have his judgment affirmed for the tract held by the Longs. To this motion Mr. Wheaton responded by challenging the jurisdiction of the Supreme Court to make the order. He argued that the Supreme Court was an appellate court only, and that it had no right to take original testimony and decide a fact that had not been decided in the lower court; that the exact location of the dividing line between the two tracts of land had not been decided by the lower court, and there was therefore no decision of the lower court upon the location of that dividing line for the Supreme Court to act upon, either to affirm, reverse or modify. Upon this proposition also the Supreme Court decided that Mr. Wheaton was right, and the case was sent back to the lower court for a new trial.

The case was subsequently twice retried before juries in the lower court, and on each trial the jury disagreed. The litigation was afterwards compromised by the plaintiff keeping the tract of land which he had in possession, and the Longs keeping the larger tract of which they were in possession. In the meantime the land had risen in value so that the one hundred and eighty acres which fell to Mr. Ellis upon the compromise was worth many times as much as the entire five hundred acres were worth when the litigation commenced. The land lies in the heart of the celebrated Vaca Valley.

After Mr. Wheaton commenced his career as a patent lawyer he largely withdrew from his practice in the State courts, although since that time there are shown at intervals in the reports of the State Supreme Court important

causes in which he made the arguments upon one side or the other of each case.

It was in the year 1868, three years after his removal to San Francisco, that Mr. Wheaton began his active and long career in what has since been his chief line of practice. His connection with the great suit of N. W. Spaulding & Co. vs. Tucker & Putnam, agents of the American Saw Company, was an example of that "tide in the affairs of men, which, taken at the flood, leads on to fortune."

Nathan W. Spaulding, Assistant United States Treasurer at San Francisco from May 5, 1881, to August 20, 1885, came to California in the year 1851 from Maine, where he was born, September 24, 1829. At a comparatively early date in his long career, remarkable for achievements in business and invention, he made the discovery of which the litigation now to be noticed was a product. It was at Sacramento in 1859, where he had a shop for the repair and sale of saws. The discovery was an improved method for fixing teeth in circular saws. Inserted-tooth saws had been known for many years to possess great advantages over solid tooth saws. Teeth made separate from the saw plate could be tempered and formed into better shape for fast and easy cutting than when made out of and being a part of the saw plate itself and could be replaced when damaged. But these and other advantages of inserted tooth saws could not be made available, on account of the tendency of the saw plate to crack from the corners of the sockets in which the teeth were inserted. These sockets had always had square corners. Mr. Spaulding by experiment found that a blow from a sledge would not crack the saw plate, but that the fracture occurred while the saw was in motion, subjected to the various strains, called by experts the side strain, the twisting strain, and the splitting strain. He found by careful investigation that the strain and constant vibration incident upon the use of the saw caused crystalization of the metal at this point, and, with a powerful glass, minute crystals and fractures could at first be observed which soon developed into cracks that before long ruined the saw plate. No such defects proceeded from any other part of the socket. The happy thought occurred to the inventive mind in search of ways and means to accomplish ends, that if the point of difficulty was in all cases at the angle of the socket, what would be the result if there were no angles? Numerous practical tests were made to demonstrate the truth of the idea, and the problem was solved. He simply made the corners of the socket round, or, as Mr. Wheaton expressed it in one of his briefs, he used circular lines in forming the junction of the base and sides of the socket, or as the letters-patent afterward stated, he used circular lines for the sockets at the base or other places therein where the pressure or force applies. A beautiful effect was secured, a great result was accomplished, no less than a perfect protection against the cracking of the saw plate. A revolution was wrought in the manufacture of lumber. At the trial of Spaulding's patent cases many of our largest and most practical millmen testified to the great improvement made by Mr. Spaulding, which in some instances increased the output of their mills several hundred per cent.

Mr. Spaulding's application to the government for a patent was at first rejected. The nature of the invention was not grasped. But when proof was introduced to them showing the great effect produced by the use of circular lines in a saw socket, they looked deeper. A discovery of incalculable value was apparent. The letters-patent applied for were issued. A flow of gold came in to the inventor from appreciative millowners. The American Saw Company, having its headquarters at New York City, sent to the Pacific Coast a large lot of saws equipped according to the new method, and proceeded to undersell the patentee in this market, through its agents, William F. Tucker and S. O. Putnam. Mr. Spaulding sued these parties in their individual capacity, but they were the agents of the American Saw Company, and that company made their fight in this great suit.

There never has been in our courts a series of lawsuits more persistently or bitterly contested; unlimited capital and talent and everything that either could control to break down Spaulding's patent were arrayed on one side, while the other was nerved by the consciousness of right, and a bulldog determination to sustain a principle, on the part of both client and counsel.

It is a curious fact that Mr. Spaulding had been turned away by several of the most eminent lawyers, to whom he had successively applied to take his case, before a friend directed him to Mr. Wheaton.

In this suit Mr. Wheaton had Hall McAllister for his adversary. George Gifford of New York City, since deceased, but then probably holding the first place at the American bar in patent cases, was also employed for the defense, and devoted himself to the examination of witnesses before masters in chancery in eastern cities. In this way was the evidence taken, the suit being in equity in the United States Circuit Court at San Francisco. The question was, had there been a public use of Mr. Spaulding's discovery before? In gathering evidence and attending examinations in the East, Mr. Wheaton expended $5,000 of his client's money in a period of six weeks. As will be granted, it was an arduous and costly controversy. In the cloud of witnesses for the defense was R. M. Hoe, patentee of the Hoe printing press. He testified that R. M. Hoe & Co. had made use of the same thing on which Mr. Spaulding had received letters-patent, in the year 1837. This and all like evidence was really destroyed by Mr. Wheaton's cross-examination. When the evidence was all in and reviewed, he was enabled to argue logically that rounding the junction of the base and sides of the sockets was an original conception of his client's, and was a very great and valuable improvement upon the saw, and patentable. It came within that class of improvements which are called combinations, the form being one of the elements of the combination. He ar-

gued his side of the case alone, and showed that where form is employed to produce a new effect, it is as much a subject of a patent as any other device.

The result of this suit was a judgment in favor of Mr. Spaulding, fully sustaining his patent.

Apart from his legal career, Mr. Wheaton has a long record as an inventor. His crowning work in this field was rewarded with a patent in 1892. In 1890 he was attorney in a notable suit brought by Norton Brothers of Chicago against San Francisco people for infringement of the patent for a can-heading machine, and his study of the case led him to the invention of a machine far superior to any then in use. Its capacity was four times that of the Norton machine. It is used for putting the tops and bottoms of tin cans upon the can-bodies. It does no other part of the work of making cans. It puts the two heads on 10,000 cans in one hour. The great oyster canning house of A. Booth & Co., of Baltimore, early saw the superiority of this machine, and purchased an interest in the patent. Mr. Wheaton realized $20,000 for his patent. The machines have been in operation in California canning factories since 1894. An editorial writer of San Francisco, after examining this invention in 1897, observed: "The ingenuity which conceived and developed the new and original plan of the machine, as well as that which invented and applied the devices and details of the mechanism which were necessary to the construction of the completed machine, and the perfect and rapid operation of the machine while doing its work, all unite to place it among the numerous ingenious labor-saving inventions that have been produced in California, and by Californians, and which are creditable to our great State, and of which every Californian must feel a thrill of pride."

Mr. Wheaton was united in marriage with Miss Carrie C. Webster, at Suisun, December 24, 1862. She died in July, 1873. On September 24, 1876, Mr. Wheaton married Miss Dora Perine, a lady of rare musical and artistic taste, also of Suisun. This lady lives, and they have two daughters. A son by the first wife is now a young man of twenty-six years, and in business in San Francisco. He has developed a strong and elevated character, and is of a mechanical turn of mind. A comfortable home on the Sacramento-Street hill, has been the family dwelling since the year 1868. Mr. Wheaton has a moderate fortune. His law offices are spacious and elegantly furnished, his library being one of the largest and most select. He is still in active practice, in partnership with Isaac M. Kalloch, son of the late Isaac S. Kalloch, once mayor of San Francisco.

C. M. WHEELER.

This gentleman is the son of the late E. D. Wheeler, who was a California pioneer, and who was one of the very ablest legislators and lawyers our State has known, having been in the State senate from Yuba county in 1859-60, and many years afterwards a distinguished District Judge in San Francisco.

Mr. Wheeler was born at Marysville, California, while his father was in large practice there, October 27, 1859. His mother was a daughter of General George Rowe, also a prominent lawyer of Marysville, and a California pioneer. Mr. Wheeler received his early education in this State, but in 1875 was sent East to school, and remained there until 1878. Returning, he attended Santa Clara College, and Hastings College of the Law. He was graduated from the law college in May, 1884. He began the practice in San Francisco, but

very soon removed to Ukiah, where he was in partnership with Hon. Thomas L. Carothers for two years. He then located permanently at Eureka. During the fourteen years since passed he has been in active practice in that city, and has been engaged on one side or the other in most of the important cases that have arisen in Humboldt county.

In April, 1892, Mr. Wheeler was married to Ida Anna Roberts, daughter of C. F. Roberts, the present treasurer of Humboldt county.

G. WILEY WELLS.

Col. Guilford Wiley Wells was born at Conesus Centre, New York, February 14, 1840, the youngest of three children of Isaac Tichenor Wells and Charity Kenyon. The Wells family can be traced back to the time of William the Conqueror in England, and to the latter part of the sixteenth century in America, and the line is lit up with many illustrious names.

Colonel Wells was educated at Genesee Wesleyan Seminary and College, Lima, New York. He was there when the Civil War broke out, and, at the first call for volunteers, enlisted in the First New York Dragoons. He fought nearly through the war, taking part in thirty-seven battles, and rising by his gallantry in action from the ranks to brevet lieutenant-colonel. He was twice wounded, the last time in February, 1865, his left arm being permanently disabled, and he was discharged from the service, in consequence, in that month.

Charles E. Wilson

He entered the law department of Columbian College at Washington, D. C., and was graduated therefrom in 1867. Removing to Holly Springs, Mississippi, in December, 1869, he began the practice of law, and was following the same when, in June, 1870, President Grant appointed him United States attorney for the Northern district of that state. At the end of his term he was again appointed to the office. In the middle of his second term, 1876, he was elected, as a Republican, to the national house of representatives, by 7,000 majority, from the Second Mississippi district.

In June, 1877, President Hayes tendered to Colonel Wells the office of consul-general at Shanghai, China, which he accepted. He assumed charge of the consulate, September 13, 1877. He resigned the office on the 10th of January following. He twice refused the appointment of consul to Hong Kong. He settled at Los Angeles in 1879, and formed a law partnership with A. Brunson, under the firm name of Brunson & Wells. Mr. Bradner W. Lee, his nephew, was admitted to the firm in the following year. This association lasted until Mr. Brunson went on the bench of the Superior Court in January, 1885. Colonel Wells then became head of the law firm of Wells, Guthrie & Lee. After a busy and prosperous period at the Los Angeles bar, of some fifteen years, Colonel Wells retired from practice and removed his residence to Santa Monica. His splendid law library of 6,000 volumes is in the office of the prominent Los Angeles law firm of Works & Lee.

The Colonel married Miss Katy C. Fox at Avoca, N. Y., December 22, 1866. There is no issue living.

CHARLES E. WILSON.

This gentleman has been in the stir and push of practice in the great bar of our metropolis for over thirty years, without interruption. Aside from his long and steady work in civil cases generally, he has become one of the best-known men in the profession by reason of his conduct of important business interests, notably those of large lumber companies, and in connection with extensive real estate litigation.

We could not expect a man to fail in any calling, who had been reared with discretion on a Maine farm and fought with credit through a great war. The pages of this History will show how many lawyers who have won reputation and fortune in California, had a like tutelage, and came to this peaceful shore from "the red baptism of the battlefield."

Mr. Wilson was born at Bradford, Maine, on September 11, 1839. He comes from one of the oldest American families, of English ancestry. His father, Miles Wilson, was remarkable for his useful and exemplary life and for its long span of years. Miles Wilson was an officer in the state militia of Maine, commissioned lieutenant by Governor Enoch Lincoln, in 1828, and served a term in the legislature. He came to California long before his son, Charles E.—as early as 1850. He spent two years here, mining for a time in Calaveras county. Returning to Bradford, Maine, he lived to the age of ninety-three years, his mind in full vigor to the end.

Thomas K. Wilson, the eldest son of Miles, came to California in 1860, settling in Calaveras county, where he practiced law until 1870. He then removed to San Francisco. He attained prominence in the profession in that city, and was elected one of the Judges of the Supreme Court at the first election under the present constitution (1879). He was re-elected in 1884, serving from January, 1880, to May 16, 1889, when he resigned and removed to Los Angeles city to engage in law practice. He died there in October, 1894.

Charles E. Wilson, like so many of whom this History treats, was raised on his father's farm, doing his proper share of farm work and attending the district school in winter. He later attended the high school and academies, and acquired a good education. He then followed teaching school for several years, and was preparing himself at the same time for college, when the Civil War broke out. Joining the Second Maine Cavalry, he served from November, 1863, until the close of the war, being mustered out in December, 1865. Enlisting as a private, he was promoted to quartermaster-sergeant, to sergeant-major, and to first lieutenant. With his regiment he took part in the Red River Expedition, and in the capture of Mobile.

The war ended, Mr. Wilson entered the law office of Peters & Wilson, in Bangor, Maine, as a student. He remained with that firm nearly three years, at the end of which time he was admitted to practice by the Supreme Court of Maine. He immediately came to California, arriving at Stockton in the latter part of November, 1867. He remained there, in the office of E. S. Pillsbury, Esq., now a prominent lawyer of San Francisco, until July, 1868, when he located in San Francisco.

Regarding the law as "a jealous mistress," and believing that those who entrust their business affairs to a lawyer are entitled to his best efforts in their behalf, Mr. Wilson has devoted his entire time to his profession, and has persistently kept aloof from politics and all other "entangling alliances." He has, however, taken a deep interest in the Grand Army of the Republic, serving that organization as commander of the Department of California and Nevada in 1895. During his term of office he inaugurated the custom of reading Lincoln's immortal Gettysburg address, as a part of Memorial Day exercises. At his suggestion, this custom was adopted by the National Encampment of 1896, as a permanent feature of all Memorial Day exercises conducted by the Grand Army of the Republic. He has been a member of George H. Thomas Post since its organization, and is past commander of that post.

Mr. Wilson acquired a practical knowledge of the lumber business—a great industry in his native state—in his boyhood days. This has served him to good purpose on the Pacific Coast, many heavy lumber companies having entrusted their legal affairs to him. He is

careful and painstaking in his practice, and capable of long-continued and hard work. He is watchful and judicious in trying his cases, and is an easy and forcible speaker.

Mr. Wilson was united in marriage, on July 1, 1869, with Miss Carrie A. Watson of San Francisco, who died in August, 1870. He has since remained single. Mr. Fred M. Wilson, of the San Francisco bar, is his son.

H. R. WILEY.

Mr. Wiley was born on a farm near the city of Oshkosh, Wisconsin, on April 5th, 1855. His father and grandfather on the father's side, were natives of the State of New York. His mother was born in the State of Pennsylvania and was of English-German descent. His grandfather on the father's side served in the War of 1812.

In 1865, at the age of ten, our subject, with his parents and others, started across the plains for California. The Indians were still warlike, and cut off and murdered a part of his company, and carried one woman into cap-

tivity. The party reached Salt Lake City late in autumn, and wintered there, arriving in California in 1866.

Young Wiley's father bought a tract of land in Southern California in what is now Ventura county, but was then the home of the "greaser," the wild mustang, and the grizzly bear.

The boy had made good progress in the public schools of Oshkosh, but after starting for California his studies were pursued under many difficulties—sometimes in school, sometimes at home. He left the family dwelling at the age of seventeen and began life for himself as salesman in a store in San Francisco. At nineteen he joined his brothers in mercantile business at Santa Paula, Ventura county, but soon gave up all interest in the business in order to pursue his studies, and entered Christian College, at Santa Rosa, a school conducted under church auspices. At the beginning of the sophomore year he was regularly installed as tutor by the board of regents. Thus teaching and studying he completed the course in three years and received the degree of bachelor of arts.

In 1877, while yet a very young man, Mr. Wiley opened an academy at Santa Ana, then in Los Angeles county, but soon gave up that work on account of poor health. A year later he began teaching the public schools of the same county. Afterwards he taught for two years in Napa county and went from there to Shasta county, where he became principal of the Redding public schools. He delivered the funeral oration of President Jas. A. Garfield, at the exercises held in that place.

At the end of that school term he opened a normal institute for the training of young teachers, and continued normal work until the State normal school was established at Chico. At times he was assisted in lectures and practical schoolroom work by Hon. Fred Campbell, superintendent of public instruction, and other prominent educators of the State. The Educational *Journal* took occasion to say: "To Prof. H. R. Wiley, principal of the Redding schools, belongs the credit of holding the first normal institute in California."

While engaged in this work, he delivered many evening lectures, of a popular kind, before the members of the institute, and also before the regular annual teachers' institute. He delivered an address before the American Horticultural Society, when it met on this coast, which Ridpath, the historian, who was present on that occasion, in his published account of his California trip, was pleased to describe as "eloquence and good sense in rare combination."

During these years of teaching Professor Wiley had been reading law in accordance with an early formed plan to enter the legal profession.

While yet a teacher and at the urgent request of a lawyer friend who desired his assistance in a murder trial, he was admitted upon examination, to the Shasta county bar, and took part in that trial, making an address to the jury. He subsequently passed a Supreme Court examination, and, still later, received the degree of LL. B. from Hastings College of the Law. Mr. Wiley began regular practice at Redding in 1886. He removed to San Francisco in 1892.

In connection with his law practice he is now lecturer on jurisprudence in two of the colleges of the University of California.

As a side and more profitable enterprise he is engaged in mining in the State of Sonora, Mexico.

On December 26th, 1885, Mr. Wiley was married to Miss Villa Chappell, daughter of the late Hon. J. N. Chappell, of Redding. His family now consists of his wife and two children, a girl and a boy, and his home is in Berkeley.

F. R. WILLIS.

Frank R. Willis was born at North Adams, Massachusetts, August 17, 1855, and two years thereafter emigrated with his parents to Linn county, Iowa. Until he reached the age of

sixteen years he resided on a farm with his parents. He then left home to commence the battle of life, and has successfully carried it on to the present time. He worked during vacation time in order to earn money with which to support himself and pay tuition. After attending college for two years he entered the Iowa State Normal School at Cedar Falls, Iowa, graduating in June, 1879. He then taught school for one year in Minnesota. He next entered the law department of the Iowa State University, and was duly graduated with honors in June, 1801. Removing to Aurelia, Iowa, he was elected successively city attorney and mayor of that town, filling those positions creditably to himself, until he resigned in December, 1883. In that month he settled at Los Angeles, California, where he has been ever since, in the active practice of law. From 1886 to 1888 Mr. Willis was attorney for the

public administrator of Los Angeles county, and in 1894 he was appointed deputy district attorney, which position he has held up to the present time. In criminal and probate pleading and practice Mr. Willis stands very high at the Los Angeles bar.

In politics Mr. Willis is a Republican, and for the past twelve years his political work has materially assisted his party in the State, county and city elections.

He is also an active member of the Masonic fraternity in all its branches, as well as a member of many other fraternal societies.

His great grandfather on the paternal side was Major Daniel Willis Coleman Moss, Revolutionary War. He is descended on his mother's side from Perigrine White, the first white child born in New England.

C. N. WILSON.

Christopher N. Wilson was born in the town of Gustavus, Trumbull county, Ohio, January 20, 1830. His early education was obtained in Quaker schools at Smithfield and Somerton, Ohio. Later, he was a student at Alleghany College, Meadville, Pennsylvania, and at that city he commenced the study of law in the office of William R. Scott. After the commencement of the War of the Rebellion he was offered and accepted an appointment in the treasury department, Washington, D. C. He subsequently entered the law department of Columbian University, and was graduated in the class of 1869. He was admitted to practice in the Supreme Court of the District of Columbia in the same year. In the year following he started for the State of California, and settled at Los Angeles city, where he has been in active practice continuously for more than thirty years, having been admitted to the bar of all the courts in this State and in the departments at Washington, D. C.

Mr. Wilson has always been a friend of the American Indians, and has fought their battles in the courts of the country, and in the departments at Washington. He has been deeply interested in that race since he came in contact with it in the fifties, when he was engaged in making surveys in the Crow River country, in Minnesota.

He is a member of the National Guard of California. He was commissioned Judge-Advocate, with the rank of major, on General Banning's staff, in 1872, was one of the organizers of the Eagle Corps in 1881, and later was commissary of the Seventh Regiment, N. G. C. He belongs to the Masonic order, and is a low church Episcopalian. In politics, he is a Native American, and in 1886 was the candidate of that party for secretary of state of the State of California. He was a delegate to the National American convention that met at Washington City, in August, 1888, and has been for many years a member of the State central committee of his party.

PERCY R. WILSON.

Percy R. Wilson was born February 20, 1855, at Athens, Ohio. His father, Horace Wilson, was a prominent lawyer of central Ohio for many years. Mr. Wilson's early education was received at Columbus, Ohio, in the public schools. He was graduated from the literary department of Michigan University, at Ann Arbor, at the age of twenty, in 1875, being the youngest man in his class. He studied law with his father, and at the law school of Michigan University, and was admitted to the bar at the age of twenty-one. He then went abroad and studied at Leipzig University for three years. In 1880 he began the active practice of law with his father, at Columbus, Ohio. Mr. Wilson came to California in November, 1882. He resumed active practice in Los Angeles in 1885, and has followed it there ever since. He formed a partnership with Hon. R. N. Bulla in 1887. The firm of Wilson & Bulla was dissolved in 1900, Mr. Bulla then retiring from active practice.

Mr. Wilson was married in 1880. His family consists of his wife and four children, two boys and two girls. His practice has been largely in the lines of corporation and commercial law.

C. L. WITTEN.

Mr. Witten was born in 1860, in Contra Costa county, California, and remained there until removing to San Jose, in 1883, to attend the University of the Pacific. Shortly there-

after he entered the law office of S. F. Leib, where he read law, taking also a course of law lectures at the university. He was admitted to practice in November, 1885, and remained in Mr. Leib's office a general practitioner until 1889, when he went into the district attorney's office, as chief deputy, under D. W. Burchard, devoting his entire time to criminal practice. During his term of office he assisted in prosecuting a number of murder cases, and helped his principal in making a record, to the effect "that no guilty man escaped." After leaving the district attorney's office he engaged in general practice, handling many large estates and defending some important criminal cases, the last being the case of John A. Mathews, charged with murder. He is a member of both the Masonic fraternity and Odd Fellows, and has served as president of the board of free library trustees.

Mr. Witten was the first president of the San Jose Club, which at one time comprised all the younger members of the San Jose bar. He was also a charter member and president of the Bachelors' Club, which flourished in the Garden City until marriage caused its existence to cease. Mr. Witten renounced his own allegiance by reason of his marriage, in 1891. As a lawyer, he is careful, thorough, tenacious and conscientious, and has met with deserved success since his admission to the bar.

Located in spacious offices, with a fine working library, his time is now mostly taken up with office practice, with the occasional variation of a trial in court.

C. C. WRIGHT.

C. C. Wright, author of the "Wright Act" of March, 1887, relating to the subject of irrigation, was born on a farm near the village of Glasgow, in Jefferson county, Iowa, on the 29th of June, 1849. He has a long American ancestry. His father, a native of Kentucky, and his mother, of Tennessee, settled, after their marriage, in Iowa, in 1836. There they lived, and cultivated lands acquired from the United States government, until their deaths.

C. C. Wright attended the common schools in boyhood, and, in June, 1872, was graduated from the Iowa Wesleyan University, at Mount Pleasant. He served as local reporter on the *Burlington Hawkeye* for a few months, but the calling was not congenial to him, and he took up the study of law at Bloomfield, Iowa, in the office of ex-Judge H. H. Trimble. The latter gentleman is still at the bar, continuing a distinguished career. He was the attorney for the contesting brother in the great Davis will case, in Montana, a few years ago, and is now chief counsel of the Burlington & Missouri River Railroad Company.

Mr. Wright came to California in October, 1873. He went to La Grange, in Stanislaus county, and taught school for two years. He kept reading law during this period. Removing to Modesto, the county seat, he was first admitted to the bar there, in the old District Court, in April, 1875. About six months thereafter he was appointed district attorney, and

later was elected to that office twice, as a Democrat, holding until the beginning of the year 1881. In the latter year he was admitted to the bar of the State Supreme Court. One of the first cases he was called upon to pros-

E. B. Young

cute as district attorney was that of Dick Cullen, for murder. The accused was found guilty and was hanged.

In the fall of 1886 Mr. Wright was elected to the assembly, as a Democrat. He served at the session of January-March, 1887. It was, of course, at that session that he introduced the "Wright Act," which was approved on the 7th of March.

Mr. Wright had a successful career of twenty years at the bar in Stanislaus county. Then, in August, 1895, he removed to Los Angeles, where he is now well established. He has practiced there without any partner, substantially. He made no mistake in the change. He has a fine practice, plenty of friends, for he is what is called a whole-souled man, as well as an able lawyer, and the climate is all that was ever claimed for it. He married Miss Mamie Swain, of Modesto, at San Francisco, in 1883, and the issue of a happy union is one child, Alfred, now eleven years old.

E. B. YOUNG.

Mr. Young was born on July 1, 1852, in Manchester, England. He was educated at Melbourne, Victoria, Australia.

Coming to California in the early part of 1876, he located at San Francisco, and was a clerk successively in the offices of McAllister & Bergin, George A. Nourse and T. H. Rearden, until 1881.

He attended the first class of the Hastings College of the Law, and was graduated from that college in 1881. He was admitted to the bar of the Supreme Court of this State on the 25th day of July, 1881, and ever since that time has been actively engaged in the practice of his profession.

Mr. Young's long-existing partnership with Mr. George F. Gordon was begun in the year 1882. This is now one of our oldest law firms, and conducts a large business. Both of its members enjoyed the unqualified esteem, as men and lawyers, of the great McAllister, who was in the habit of calling on them to attend to a portion of his overflowing practice.

Among the earlier of the important cases which have engaged Mr. Young were the actions prosecuted by the government against some of what were known as the "Star Route" contractors—that is, mail carriers contracting under the government. In all this litigation —in which the government brought suits to recover sums of money amounting to nearly one million dollars—Mr. Young was successful for his clients.

The firm of Gordon & Young were engaged in the case of Noonan vs. Nunan, involving the ownership of the Hibernia Brewery, in San Francisco; also, the White will case, at Ukiah, Mendocino county.

Mr. Young also represented Josephine Walter, the widow of the late Gustav Walter, of the Orpheum Theatre, in connection with the estate of her husband, and the litigation instituted by Emma Sterrett, claiming to be entitled to all the interest of the estate in the Orpheum Theatre. This case resulted in the estate maintaining its interest in that theatre.

The firm of Gordon & Young is, and has been for many years attorneys for many leading business firms in San Francisco, notably the Joshua Hendy Machine Works, American Type Founders' Co., Palmer & Rey, J. J. Moore & Co.; and they are also the attorneys for the Germania Trust Company, and the Swiss-American Bank, both banking houses doing business in San Francisco.

Mr. Young is married, and has two sons. He is of Democratic politics. Never holding public office, he has always shown a lively interest in politics, and has been a member of many Democratic conventions, taking an active part therein. He exercises a large influence in the councils of the Ancient Order of United Workmen, and the Knights of Honor.

S. D. WOODS.

S. D. Woods, formerly of San Francisco, has come to be a veteran of the Stockton bar. He was brought by his parents to San Francisco, in his infancy, in 1849. At the age of seventeen he began teaching school. Some of the most noted men of California, and, indeed, of the United States, were taught by Mr. Woods during this period of his active life, among them being the now famous poet, Edwin Markham, whose genius Mr. Woods first discovered in the little building then known as "Black's schoolhouse," four miles east of Suisun city, when young Markham first became his pupil.

Mr. Woods was admitted to practice law in 1875, but failing in health, some three years later he forsook the bar and went to mining. In 1882 he visited the southeastern portion of our State, and gave much time to a thorough exploration and investigation of the conditions prevailing in Death Valley, and its topography. Later on he traveled extensively throughout the northwestern part of this continent, making a continuous ride from San Francisco to Seattle, a distance of some 800 miles, on horseback.

Mr. Woods took up his residence in Stockton in 1885, and entered on his profession with ardor and energy. He was successful from the beginning. Our Supreme Court reports show that Mr. Woods has a very full business.

Mr. Woods yet continues to be a student of law and always finds time to give to reading and investigation. His knowledge of the law is comprehensive and reliable. He is a just and courteous man and deservedly popular in and out of court.

He has particularly distinguished himself in corporation law, and among his clients are numbered many large corporations, banks, and other large mercantile concerns, which continually seek his counsel. This has necessitated his maintaining an office at San Francisco, in the Crocker building, where he spends about half of his time.

He has always been a Republican in politics, believing in and sympathizing with the

principles of that party, though of late years he has not taken an active interest in party affairs until the summer of 1900.

Mr. Woods is ever ready to assist in promoting the prosperity of San Joaquin county, and can always be found working shoulder to shoulder with his public-spirited fellow-citizens for the best interests of the community.

In the presidential campaign of 1900 Mr. Woods was the Republican candidate for congress from the Second District, and at the election in November, was elected by a very large majority over the Democratic nominee.

CHARLES B. YOUNGER.

Charles B. Younger is one of the members of the bar in California who has practiced here since the fifties. He is a native of Missouri, and was born at Liberty in 1831, descended from an ancestry that lived in Maryland in colonial times.

He removed when a lad, with his parents, to Kentucky, where he subsequently entered Centre College at Danville, graduating therefrom in 1853. After graduating he read law for two years in the office of Hon. Joshua F. Bell at Danville, and was admitted to the Kentucky bar in 1855. His first work of a semi-legal nature, done while reading law, was reporting for the Louisville papers the murder trial of Matt. Ward, of Elizabethtown, in which case there was an array of the most eminent advocates of that commonwealth.

In the year of his admission to the bar, Mr. Younger came to San Jose, Cal., where his father, the late Colonel Younger, had preceded him several years. He at once entered upon the practice of his profession, which has been chiefly confined to litigation arising in the counties of Santa Clara and Santa Cruz.

Since the marriage of Mr. Younger in 1872 to Miss Jeannie Waddell, at Santa Cruz, he has permanently resided at that city. Two children were born of the marriage, a daughter and a son, the latter being an attorney and counsellor-at-law.

Although law is often an entrance to politics, Mr. Younger has taken no active interest in politics, only the quieter concern of a good citizen. His Democracy is of the old school.

He has been engaged on one side or another in nearly all litigation of any consequence which has arisen in Santa Cruz county, including much of the earlier land litigation; the litigation of the Santa Cruz Railroad Company with the county of Santa Cruz, and with individuals; the "Moore cases," which have been before the Supreme Court in various phases for twenty-five years.

Personally Mr. Younger is pleasant, affable and agreeable, but not effusive. He is possessed of a peculiar dry wit, which often relieves the monotony of a weary trial.

It was recently said of Mr. Younger that he is "one of the ablest lawyers in the State. His success has come from a profound knowledge of the intricacies of the law, and in civil cases involving fine legal propositions there is no more formidable fighter in the State, and he has the reputation of never quitting unless successful."

JOHN QUINCY ADAMS.

John Quincy Adams was born in New Jersey, June 27, 1824. He came in infancy to San Francisco, arriving as early as March 26, 1847, with his father, a member of "Stevenson's Regiment." He was educated in the San Francisco public schools and in the Collegiate Institute, and Law College, Benicia. He was admitted to the bar of the State Supreme Court, October 13, 1873, and has since practiced in San Francisco. On September 9, 1872, he delivered the annual oration before the Society of California Pioneers (of which he is a member).

H. C. AUSTIN.

This experienced Police Judge of Los Angeles city was born near Boston, Mass., January 6, 1836. He was educated in the public schools, and was taught the printer's trade. After some service as a reporter on the Boston dailies, the *Mail* and the *Herald*, he went in 1859, to Chicago and was reporter, and later war correspondent, for the *Tribune* of that city. Afterwards he became editor of the Peoria (Illinois) *Transcript*. In 1865 he was appointed to a position in the General Land Office at Washington, D. C., which he held until July, 1869. He then removed to Los

Angeles, Cal. He went to that city to take the office of Register of the United States Land Office, to which he had just been appointed by President Grant. He had taken up the study of law in Washington City, and attended during his residence there a course of law lectures at Columbian Law School; and now at Los Angeles he completed his law reading, and was admitted to the bar. He was practicing at the Los Angeles bar, when, in 1884, he was elected City Justice and ex-officio Police Judge. By successive re-elections, he held the position for five terms, from January, 1885, to January, 1895. Declining to serve longer on the bench, on account of ill health, he resumed law practice and followed it for four years. In the fall of 1898, he was again elected to his old seat on the city bench, the term now being for four years, and running to the first week in January, 1903. He is now occupied with the duties of that office.

The Judge married in 1859, Sarah E. Myers, whose father was an officer on Blucher's staff at the battle of Waterloo. There have been four children of this union; two girls and two boys. Three of these are now living.

ROBERT N. BULLA.

Robert N. Bulla was born in Wayne county, Indiana, in 1852. He was graduated from the National University at Lebanon, Ohio, in 1875, and a few years later was admitted to the bar at Cincinnati. He came to California in 1883, and located at Los Angeles, where he has ever since resided. The partnership between him and Mr. Percy R. Wilson, under the firm name of Wilson & Bulla, dates from the year 1888.

Soon after beginning practice in Los Angeles, Mr. Bulla not only became very conspicuous at the bar, but was an acknowledged political leader on the Republican side. He has now for some years been a distinguished public man. He has twice been elected to the assembly, and served in the sessions of 1893 and 1895. In 1896 his party convention nominated him for the State senate, and he was elected by a good majority.

The history of the Los Angeles Chamber of Commerce, by Charles Dwight Willard (1900) says:

"Mr. Bulla's service in the legislature was of exceptional importance, as he was put on working committees, and took an active hand in all the great issues that came up for consideration. He was the author of the bill requiring divorced people to wait a year before marrying again, the delinquent tax law, and many other important measures. He was appointed by Governor Markham on the Torrens land law commission, and, as a result of his labors, the legislature adopted a measure embodying the essential features of that system of land transfers. A similar law was passed in Illinois, and when it was believed unconstitutional, it was remodeled in accordance with the measure prepared by Mr. Bulla. He was appointed a member of the code commission by Governor Budd, a Democrat, and did effective service in that important body."

Mr. Bulla is regarded by the legal profession as one of its most capable members. He has now become identified with large oil interests, and is enjoying greater prosperity than ever.

He was one of the leading contestants for the place of United States senator to succeed Hon. Stephen M. White, at the legislative session of 1899. The Republican county convention of Los Angeles, by an overwhelming majority, instructed the senators and assemblymen from that county to vote for him. The long and hard struggle ended in the election of Hon. Thomas R. Bard, to which result Mr. Bulla finally contributed.

OLIVER B. CARTER.

Oliver B. Carter, a member of the Los Angeles bar, was born September 26, 1857, at La Grange, Fayette county, Texas. Like so many men who have made a place for themselves in the world, he had few advantages in his early life. Until he was seventeen, he lived

alternately in the country and town, and received but a common school education. Yet he was never idle, and found opportunities for self-improvement that are ever within the grasp of the earnest soul who is seeking for higher and better things.

In 1874 he moved to Petersburg, Menard county, Ill., and here at the age of twenty he commenced the study of the law. He early engaged in the abstract and title business, to which he has given his principal attention in the intervening years. He was for eight years deputy clerk of the Circuit Court of Menard county, Illinois.

In 1888, Mr. Carter came to California and located at Los Angeles. During his active career there he has been connected in a legal capacity with various abstract companies. For the past five years he has been examining attorney for the Title, Guarantee and Trust Company.

Mr. Carter has achieved his success by hard, persistent work. His experience of twenty-four years in the title and abstract business has made a specialist of him in this branch of the legal profession; and he is regarded by able lawyers as an expert in probate and real estate law.

Mr. Carter was married in Petersburg, Ill., October 29, 1883, and his family consists of his wife and daughter, now seventeen years of age.

JOHN CHETWOOD, JR.

John Chetwood Jr., was born in Elizabeth, N. J., April 28, 1859. A clergyman's son, of American parentage, he was educated at Princeton College and the Columbia Law School, and was admitted to the bar in Brooklyn, N. Y., in September, 1884. He located in San Francisco in January, 1885. He was in partnership with Bartholomew Noyes (Noyes & Chetwood), for about two years, and has practiced alone from the end of that association to the present time.

HARRY T. CRESWELL.

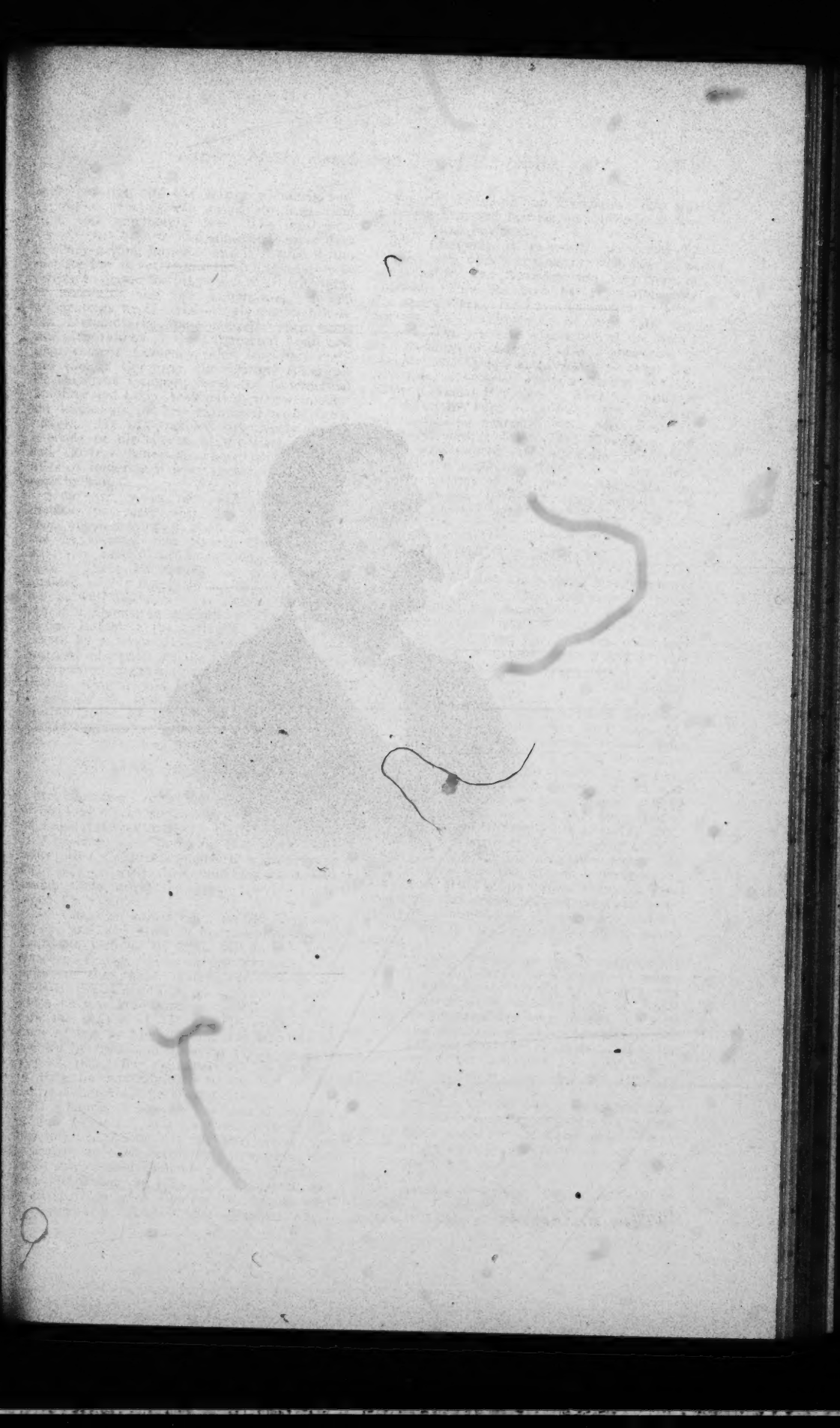
Mr. Creswell was born in Eutaw, Alabama, at the residence of the elder Harry I. Thornton, on December 10, 1850. Harry I. Thornton Jr., referred to in this History, was his uncle, and left him his estate. His father was Judge David Creswell, a Circuit Judge in Illinois. Mr. Creswell, after being admitted to the bar in his native state, went to Nevada, where he became prominent in the profession and held the office of district attorney for three terms. He was also a state senator there.

He removed to San Francisco in 1888. For three terms, 1893-98, he was city and county attorney, and city hall commissioner of San Francisco, but resigned in the middle of his last term, to go in partnership with Hon. John Garber and Joseph B. Garber, in law practice. He is a lawyer of much ability, and has always enjoyed great prosperity. The leading law firm of Garber, Creswell & Garber dates from 1897.

LOUIS F. DUNAND.

Mr. Dunand was born in New Orleans, La., September 15th, 1849. His father, Maurice Dunand, a mining engineer, attracted by the discovery of gold in California, arrived with his family in the fall of '50. The father was able to give his son the advantage of a first-

class education in the public schools of San Francisco, and at Santa Clara College. On his admission to the bar in 1879, Mr. Dunand commenced the practice of his profession in San Francisco. For twenty years he has devoted himself more to office work than to



William H. Chapman

court practice, and has been particularly successful in real estate cases, disputed land titles, and commercial law. The legal profession has been to him something more than a money-getting business, and it is said of him that he has never encouraged litigation—preferring to obtain for his clients their just rights by honorable and fair compromise. In all his dealings he is unfalteringly conscientious. Mr. Dunand's clientage includes such firms and corporations as the Dumbarton Land and Improvement Company, the Imperial Paint and Copper Company, the Central American Development Company, and the Commercial Building and Loan Association, whose important litigations he has conducted with signal success. He has traveled extensively in the interests of his clients, in the East, Mexico, and Central America, where contracts and titles of importance were successsfully passed upon by him.

Some six years ago Mr. Dunand was enabled to carry out his long-cherished hope of possessing a home in the country, and he selected San Rafael, that beautiful little city across the bay among the Marin Hills. There he spends his evenings surrounded by his family in the study of literature as well as the law. In politics Mr. Dunand is a Democrat, and at the election held in San Rafael in the spring of 1898, he was elected by a large majority a member of the board of education for the term of four years. In fraternal organizations he holds high positions, being a past master of Doric Lodge F. and A. M., and Past Noble Grand Arch of the Order of Druids. He is an accomplished linguist.

WILLIAM H. CHAPMAN.

Mr. Chapman's name brings up the memory of the loss of the steamship Central America, off Cape Hatteras in 1857. His father, Daniel H. Chapman, went down on that vessel, with many other California pioneers, who were on their way to visit their old Eastern homes, among them being the great lawyer, Lockwood (q. v.).

Mr. Chapman comes from an old American family, and was born in Sacramento county, California, October 19, 1856. His parents were pioneers of 1849. He received his early education in the public schools, afterwards attending the University of California, from which he was graduated in the class of 1879, with the degree of M. A. He pursued the study of law by himself, and was admitted to practice by the State Supreme Court on January 11, 1881, after examination. On October 19, 1893, he was admitted to the bar of the Supreme Court of the United States.

Mr. Chapman's practice has been at the bars of San Francisco and Oakland, and in the civil line exclusively. It has been active, and principally in cases involving corporation, real estate, mining and commercial law. For some years, beginning in 1883, Mr. Chapman was in partnership with Charles W. Slack, who was afterwards (August, 1891—January, 1899) a Superior Judge of San Francisco. This was a strong firm and became very prominent, acquiring large business.

Mr. Chapman is generally accounted by leading men of his profession, as a lawyer of great ability and learning, and very safe in counsel. This has been his reputation now for many years. He has also been very prosperous, and continues to be very fully employed. He has been a member of the Board of Education of Berkeley. He is prominent in the Masonic Order, and belongs to other fraternal organizations. He is a member of California Commandery, No. 1, Knights Templar.

On July 27, 1881, at Oakland, Mr. Chapman was united in marriage with Miss Lulu E. Medbery, who is a native of Wisconsin, and also a graduate of the University of California, of the class of 1880. There are three bright children of the union—Alice Maybin, aged seventeen; Lester H., aged fourteen; and Charles Carroll, aged ten.

HUGH T. GORDON.

Hugh T. Gordon was born in Maury county, Tennessee, June 12, 1848, and comes from a noted Southern family. His grandfather, Chapman Gordon, was a Revolutionary soldier in the North Carolina line, and was in the battle of King's Mountain, when a boy of sixteen years. His father was a captain in the Forty-eighth Tennessee, C. S. A. He died at Vicksburg, Mississippi, in 1862, when his son, our subject, was a lad of fourteen summers. His mother died before he was three years old; so, at the early age of fourteen, in the midst of the Civil War, with all of its devastation and blight, he was thrown upon his own resources. During the four years of the war there was no school he could attend, and he was compelled to work on the farm during that time, and for several years after. In 1869-70 he was a student at the University of Virginia, and finished his education there. In 1872-73-74 he was the county superintendent of public schools in his native county in Tennessee, and met, combatted and overcame in his county to a large extent the prejudice existing at that time in the South to the public school system.

Mr. Gordon studied law in the office of his brother, W. B. Gordon, at Columbia, Tennessee, and was admitted to the bar in 1872. In 1874 he was married to Miss Anna M. Nicholson, the youngest daughter of Hon. A. O. P. Nicholson, who was at that time chief justice of the Supreme Court of Tennessee, and at the beginning of the Civil War a senator in congress, his colleague being Andrew Johnson, afterwards President.

Mr. and Mrs. Gordon have a delightful family of five children, three of them boys, strong, manly fellows, and two beautiful girls. These children can trace their ancestry on both sides to colonial times, and to the nobility of Scotland.

Mr. Gordon practiced law successfully in Columbia, Tennessee, in partnership with his brother, till 1883, when he went to southeastern

Arkansas, and formed a partnership with Colonel J. W. Dickinson of Arkansas City. He lost his health there, and in 1887 removed to Los Angeles, California, and opened a law office in the latter part of 1888. He stands well with the bar; is considered a good lawyer and safe counsellor, and is an honorable man.

EDWIN W. FREEMAN.

Mr. Freeman was born at Galesville, Wisconsin, October 1, 1860. After attending the common schools, he entered the Galesville University, to complete his education. The institution was founded by his uncle, Judge Gale. He began the study of law in the office of his father, G. Y. Freeman, who had a large general law practice in northwestern Wisconsin.

Mr. Freeman was admitted to the bar in that state in the spring of 1887, and came at once to California. For a time he lived in Los Angeles, where he was clerk in the law office of W. P. Gardner. He soon changed his location to San Bernardino, and was clerk in the law office of Hon. H. C. Rolfe. Shortly after taking that position he and Judge Rolfe became partners, under the firm name of Rolfe & Freeman. In May, 1892, Mr. Freeman removed to Soutn Riverside, now Corona, and became the attorney of the South Riverside Land and Water Company, the Citizen's Bank, and the Temescal Water Company, besides doing a general practice.

When Riverside county was created, in 1894, Mr. Freeman was elected as its first member of the assembly, and served at the session of 1892. In the spring of 1898 he became president of the Citizen's Bank of Corona, but resigned the position not long afterwards, because the duties thereof required a great deal of time, and seriously interfered with his law practice.

Mr. Freeman removed to Los Angeles in February, 1899, and is now enjoying a good practice there. He married Miss Maude Fauver, of La Crosse, Wisconsin, in 1890, when he was residing at San Bernardino. The lady, who had varied accomplishments, died in 1895, while Mr. Freeman was serving in the legislature.

HENRY C. GESFORD.

Henry C. Gesford, a prominent member of the San Francisco bar, was born in Napa county, in this State, in 1856. He is a graduate of the University of Michigan, of the class of 1882. Before removing to San Francisco he won great success in law and

politics in his native county, filling the offices of superintendent of schools and district attorney. He was also for two terms State senator for Napa, Lake and Yolo counties, and being Democratic in politics, had the pleasure of voting for two successful candidates of his party for United States senator, namely, Hon. George Hearst and Hon. Stephen M. White. In their election he took an active and prominent part.

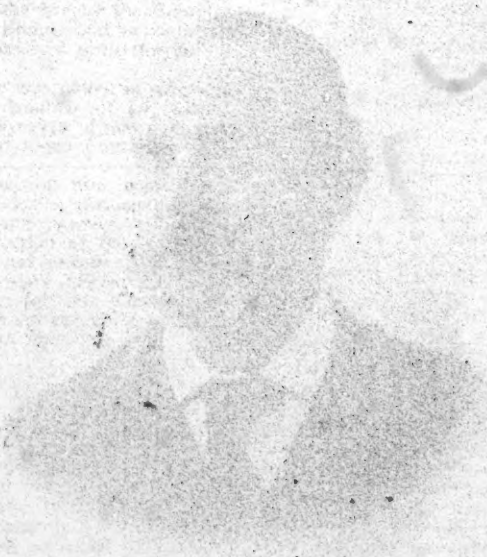
It may be fittingly stated here that ex-Senator White died at his home in Los Angeles, February 21, 1901, some weeks after the sketch of him in this History had been printed, and just as this notice of Mr. Gesford was being written. His age was forty-eight years, and he was buried amid general mourning, with the ceremonies of the Catholic church.

Mr. Gesford, when he joined the bar of San Francisco, retained his Napa clientage, and still has offices in both cities.

As a lawyer, Mr. Gesford ranks high, and although a young man, there is no one in his profession better or more favorably known. Mr. Gesford is also much occupied in fraternal circles, being a member of the Masonic order, the Odd Fellows, and Native Sons of the Golden West. He is a past grand master of the last named fraternity.

JULIAN P. JONES.

Mr. Jones was born at Warren, Ohio, August 14, 1852. His parents were English, his father being an iron worker. They removed to the then frontier in Iowa, when he was quite young, locating on a farm, where his boyhood



William J. Herrin

was spent until sixteen years of age. He obtained such education as the schools of the vicinity afforded.

In 1873 he graduated from the High School at Marion, Iowa, supporting himself the while by teaching during the summer vacations and working in an office out of school hours while prosecuting his studies.

On leaving school he went at once into the law office of Major J. B. Young, at Marion, taking up the study of law, and was admitted to practice in the District and Circuit Courts of Iowa in 1875, on examination held at Boonesboro, Iowa.

In January, 1877, having removed to his chosen field for practice, Rockford, Illinois, he was admitted to the bar by the Supreme Court of the state of Illinois, and he continued in the practice at Rockford until the fall of 1886.

In October, 1886 he was united in marriage with Eva, youngest daughter of Dr. Lucius S. Clark, a pioneer physician of that city, and, quitting his practice, at once set out for Southern California.

Locating in that section now constituting the county of Riverside, he divided his time between ranch life and practice, taking an active part in the erection of the county of Riverside. His home has been in Los Angeles city for about seven years. From that point his practice has extended into Orange and Riverside counties. He has one child, a daughter, now eight years of age.

WILLIAM J. HERRIN.

William James Herrin was born on the 16th day of June, 1858, at Mooresville, Yuba county, California. After attending the public schools of the day he engaged in teaching, which he continued with success, thus obtaining the means with which to procure a higher education, as he had become possessed of a desire to enter the profession of the law. Subsequently he was a student at the state university, and also the Hastings College of the Law. He was admitted to practice in the Supreme Court of the State of California in 1885. We copy the following from the History of Northern California, published in 1891:

"Mr. Herrin's entrance upon the practice of his adopted calling was at Oroville, and here his subsequent career has been marked by a faithful adherence to professional duties and a brilliant manifestation of his ability as a lawyer. His conduct of several noted cases here won for him distinction. Mr. Herrin has risen wholly by his own efforts to the honorable position now accorded him. Without influence or assistance from any one, he has overcome obstacles that to many would seem insurmountable, and at this time enjoys a liberal share of the law patronage of the county. In political matters he is an ardent Republican and in the campaign of 1890 was the candidate of his party for district attorney. By his brother practitioners he is spoken of as a worthy member of the bar and one who promises a great deal for the future."

In 1892 Mr. Herrin removed to San Francisco and formed a co-partnership with Geo. D. Shadburne (q. v.). This firm enjoyed a lucrative practice from the start. It was dissolved by mutual consent in 1896, since which time Mr. Herrin has been practicing alone.

Mr. Herrin is at present attorney for the sheriff of the City and County of San Francisco, Hon. John Lackmann, the successful business man and former supervisor. The position of sheriff's attorney in that populous city is one of great responsibility. It is provided for by law, with an official salary, the incumbent being selected by the sheriff. Mr. Herrin is a lawyer of great general capacity, and his practice is large and lucrative, including as it does, the business of several estates of magnitude, and heavy corporations.

JACKSON HATCH.

Jackson Hatch was born in Tuolumne county in this State, and received his education in the public schools, completing the course at the age of seventeen years. He pursued an additional course of study for the following two years, and at the age of nineteen engaged in teaching school in Colusa county, following that profession for two years. At the age of twenty-one he was admitted to practice in the Supreme Court, and was immediately elected district attorney of Colusa county, which position he held for four years. During this period he was engaged also in the conduct of an extensive civil practice. At the end of the term of his service as district attorney he entered upon a large criminal practice and in the four years following defended in twenty-one murder cases. The most important of these was that of Huram Miller, who was charged with the murder of Dr. H. J. Glenn, the Democratic candidate for Governor of this State in 1879.

In 1884 Mr. Hatch removed to Red Bluff, in Tehama county, where he practiced his profession, with business also in Shasta and Trinity. During this period he was engaged in many notable cases, among which was the action involving the removal of the county-seat of Shasta county.

In 1888 he removed to San Francisco to take the position of first assistant United States district attorney tendered to him by General John T. Carey, the United States district attorney. During his incumbency of that office he was entrusted with most of the criminal and civil cases in which the government was interested in the United States District and Circuit Courts.

In 1890 Mr. Hatch removed to San Jose, where he has since been. In that year he was named as one of the Democratic candidates for Associate Justice of the Supreme Court. The entire Democratic ticket, however, was defeated at the ensuing election.

In 1894, Mr. Hatch was mentioned as a prominent candidate for Governor of this State, but declined to have his name placed before the convention.

Since 1890, he has been engaged in the practice of law in San Jose and surrounding counties. He is at present one of the attorneys for the Union Savings Bank of San Jose, and the attorney for the Commercial and Savings Bank of San Jose, and for the San Jose and Santa Clara Railroad Company, and various other corporations and large firms.

Mr. Hatch is a prominent member of the Benevolent and Protective Order of Elks, being the exalted ruler of San Jose lodge No. 522, and a representative of that lodge to the grand lodge which held its session at Atlantic City in July, 1900.

A. MORGENTHAL.

Anton Morgenthal is a native of Lengenfeld, province of Saxony, Prussia, and was born in 1850. He came to the United States in 1871,

and to California in 1876. Since the latter year he has always resided in San Francisco. He was educated at Hamburg, Germany, and at St. Louis, Missouri. He was graduated from the Hastings College of the Law at San Francisco in 1879, and in the same year was admitted to practice by the Supreme Court at Sacramento. He has ever since been at the bar in San Francisco.

Mr. Morgenthal's professional career has been one of activity and success from the beginning. In his commodious office in the Flood building he has gathered a splendid working law library, which also represents a large money value. He is a very careful and faithful practitioner. As a man he is of quiet temperament, and sincere nature. He is always making friends and attracting clients. He is a member of the San Francisco Bar Association and of the American Legion of Honor.

Mr. Morgenthal married, at San Francisco, in 1893, Miss Minnie Smith. They have one child, a son.

GILBERT D. MUNSON.

Gilbert D. Munson's ancestors were among the early settlers of New Haven and Hartford, Connecticut. And he is one of the vice-presi-

dents of the Munson Association of New Haven. He was admitted to the bar in New York City in 1876, after a course of study in the Columbia College Law School.

After admission to the bar in Ohio, in the same year, he practiced law in Zanesville, Ohio, until elected to the Common Pleas bench in the first subdivision, Eighth Judicial district, November, 1894. Several of the Supreme Court reports of that state show the part he bore in important cases, while at the bar, notably, the Forty-seventh Ohio State Report. On retiring from the bench, after the expiration of his term of office, he came to California, and has resided in Los Angeles and engaged in the practice of the law.

The Zanesville newspapers published of Judge Munson, prior to his leaving Ohio for California, as to his official service, that he occupied the unique position of never having had a decision reversed by the Supreme Court, and that he retired from office with the good will

E. S. Salomon

and best wishes not only of every practitioner before him, but of all the people generally, without regard to party; and with the docket cleaned up to date, so that every case ready for trial could be tried when reached, if desired, without delay.

Judge Munson is a veteran soldier of the Civil War. He served in the ranks as a private soldier, but commanded his regiment, the Seventy-eighth Ohio Volunteer Infantry, at the close of the war as lieutenant-colonel, and was afterwards brevetted colonel. Since his admission to the bar of California he has taken part in the trial of a number of important cases, and acquired a valuable practice.

E. S. SALOMON.

Edward S. Salomon was born in the city of Schleswig, Germany, December 25, 1836. He came to America in 1854, and settled in Chicago, where he engaged as clerk in a store until 1857. He then commenced the study of law with Norman B. Judd, one of the most prominent and successful lawyers in the great northwest. While a student in Mr. Judd's office he became well acquainted with Abraham Lincoln, who was a warm personal friend and constant visitor at the office of Mr. Judd, when in the city of Chicago on legal business. Mr. Salomon was admitted to practice in the Supreme Court of Illinois in 1859. Soon thereafter he became a member of the law firm of Peck, Buell & Salomon. At the commencement of the War of the Rebellion he enlisted and was commissioned a second lieutenant in the Twenty-fourth Illinois Infantry. The commander of this noted regiment was Colonel Hecker, who was a leader in the German Revolution in 1848. Lieutenant Salomon was successively promoted, until he became major of his regiment.

Early in 1862 a disagreement arose between Colonel Hecker and his officers, which caused his resignation. Major Salomon and several other officers of the regiment also resigned, following the example of their colonel. On the heels of this movement, Colonel Hecker and Major Salomon proceeded to organize a new regiment, which they accomplished in a few weeks. This regiment was denominated the Eighty-second Illinois Infantry. Hecker was elected colonel, and Major Salomon was elected lieutenant-colonel. In 1863 Lieutenant-Colonel Salomon was promoted and made colonel of the Eighty-second Regiment, which was at this time a part of the Army of the Potomac. The regiment participated in all the battles of that army, including Gettysburg.

After the battle of Gettysburg, the Colonel and his command joined the forces of Fighting Joe Hooker, which became a part of the Army of the Cumberland. Colonel Salomon took part in the Atlanta campaign.

After the Atlanta campaign his regiment was placed in and became a part of the Army of Georgia, under command of General Slocum, and with this command Colonel Salomon marched with Sherman from "Atlanta to the Sea." Subsequently he took part in the great parade in Washington on the 23d and 24th of May, 1865. At the close of the war he was brevetted brigadier-general "for distinguished gallantry and meritorious services." After the battle of Gettysburg General Carl Schurz, brigade commander, said in his report to General O. O. Howard: "Colonel Salomon of the Eighty-second Illinois displayed the highest order of gallantry and determination under very trying circumstances."

Colonel J. S. Robinson, commanding the Third Brigade, Twentieth Army Corps, said: "I have the honor to respectfully request that you issue a colonel's commission to Lieutenant Colonel Edward S. Salomon, commanding the Eighty-second Illinois Infantry. It is my sincere belief that Lieutenant-Colonel Salomon fully deserves this favor, not only by his ability and merit as an officer, but more particularly by the gallantry and efficiency he has displayed in the campaign." General Joe Hooker approved of the promotion in the following language: "I concur in the within recommendation. Lieutenant-Colonel Salomon has won the good opinion of all his comrades by his great gallantry and good conduct, and it will be but a just and graceful appreciation of his services to confer this preferment upon him."

Brigadier-General A. S. Williams, in his recommendation to Secretary of War Stanton, enumerated several battles in which Colonel Salomon distinguished himself as a courageous officer and efficient commander. He specially mentioned the fighting before Resaca, Georgia, on May 14 and 15, 1864; again, on the 25th of the same month at New Hope Gap; at the battle of Peach Tree Creek; before Atlanta, on July 20, 1864. "In the fight near Averyboro, North Carolina, Colonel Salomon led his regiment with great gallantry and skill." "At the battle near Bentonville, on March 19, 1865, Colonel Salomon and command drew the unqualified admiration of all who witnessed their coolness and discipline under fire."

In concluding his report, General Williams says: "Colonel Salomon has distinguished himself in other engagements besides those which have been mentioned. At Gettysburg and Missionary Ridge his gallantry was conspicuous and challenged the highest admiration." On June 15, 1865, the Secretary of War informed Colonel Salomon that the President had commissioned him brigadier-general, "for distinguished gallantry and meritorious services during the war."

All of the foregoing quotations and extracts relating to the General's record in connection with the army are taken from the records in the War Department at Washington, and may also be found in the History of the Rebellion, published by the government by virtue of an act of congress.

Immediately after the close of the war, General Salomon returned to Chicago, and was soon elected county clerk, which was then one of the most lucrative offices in Illinois. He held this position for four years. President Grant then appointed him Governor of Washington territory. A few days before Governor Salomon left for his new western home, a large number of prominent citizens of Chicago, among whom was General Phil Sheridan, the

"Hero of Winchester," and one of the three great generals of the Civil War, presented him with a magnificent silver table service, accompanied with a handsomely engraved testimonial of esteem and friendship.

What was thought of him and his administration as Governor of the territory is best explained by the following short extract taken from a long series of resolutions passed by prominent residents of the territory:

"We express unfeigned regret that he felt it his duty to resign this office. His official acts are his best record; they have all met with the heartiest commendation of our people. A thorough and consistent Republican, baptized in the fire of battle, when gallantly sustaining the flag, he governed well; he satisfied all, for the welfare of the whole was constantly in his eye; he was true to the position he so happily filled. We are ready to accord to the new executive (his successor) a cordial welcome. We can wish him, however, no higher or better aspiration than that he may prove worthy to be the successor of one who so faithfully and well performed all his duties as Edward S. Salomon."

The Governor came to California in 1875, and entered upon the practice of his profession in San Francisco. In 1887 he was elected department commander of the G. A. R. He has been a member of that organization for many years. He was one of the organizers, and for eight years commander-in-chief, of the Army and Navy Republican League in San Francisco. He was the choice of a large majority of the G. A. R. organization on the Pacific Coast for the commission ot brigadier-general in the volunteer service for the campaign in the Philippines, but General Harrison Gray Otis, of Los Angeles, was the fortunate one to receive this honor.

In 1888 Governor Salomon was elected to the California legislature. During the session he was the recognized leader and the ablest speaker in the assembly. In 1898 he was appointed assistant district attorney of the city and county of San Francisco. He has taken an active part in all presidential campaigns for about thirty years, and ranks as one of the best campaign speakers in the State.

WILLIAM G. MURPHY.

This gentleman, now one of the oldest and best known lawyers in Northern California, was one of the ill-fated "Donner party," and came to this State in boyhood so long ago as 1846. Six members of his family succumbed to the terrible sufferings to which that party of immigrants was subjected. Another little boy of that company was destined to be a Superior Judge in the coming State. (Hon. James F. Breen.) Mr. Murphy's family settled on the Yuba river in 1847, before the gold discovery. He owned a block in Marysville when the place was platted for a city, and has been a continuous taxpayer ever since. In 1848-49 he was Indian interpreter at Bidwell's Bar. He went back to "the States" to get a schooling. In 1861 he was graduated from the University of Missouri. Returning to Marysville, he was admitted to the bar in January, 1863. He went with the rush to Washoe just then, and, in the following August was admitted to the bar of the Supreme Court of Nevada territory. Going back to his old home for good, he began a long period at the Marysville bar, during which he has been attorney in over 2,000 cases. He was several times city attorney, during the construction of the levee system, was collector of delinquent taxes, and compiled and codified the city ordinances under the political code. He has been court commissioner for over twenty years, and, in 1894, was elected district attorney as the candidate of the People's Party, receiving as many

votes as were cast for both candidates of the two old parties. Mr. Murphy's career has been marked by exceptional activity and prosperity; and he yet seems not to have passed his prime. He has raised a family of seven children.

Mr. Murphy was born in west Tennessee, January 15, 1836, so that he was but ten years old when he came with that fated party across the plains, long in advance of the gold-hunters. He crossed the plains again, with cattle, in 1854, still three years under his majority. His last trip from east to far west was by way of the isthmus, in 1862. He is a member of the Society of California Pioneers, San Francisco.

CHARLES E. SUMNER.

Charles E. Sumner was born at Moncton, New Brunswick, March 4, 1860. He comes of an old English family of that name, who emigrated in the early days to New England. He received his education in the common schools. He studied law at Shediac for four years, and afterwards attended Boston University Law School. From that school he was graduated, as LL. B., in 1881. He then traveled in Europe for a year, and, in 1883, came to California, opening a law office at Pomona. There he remained until 1896. Again he traveled for a

time in Europe, returning in 1900, when he again took up practice in Los Angeles city.

While in Pomona Mr. Sumner was city attorney. He devised the ordinance of that city which made both fine and imprisonment compulsory in case of conviction, further making it an offense to visit saloons run in violation of law. These clauses operated to make the law effectual.

Mr. Sumner married, in 1888, Miss Bessie Meserve of Santa Cruz. His family consists of his wife and two children. He has always enjoyed a large and valuable practice.

THOMAS O. TOLAND.

Hon. Thomas O. Toland, member of the State Board of Equalization, and very prominent at the bar in the southern counties, is a native of Alabama, and was born in the year 1857. He came to California in 1875. He was graduated from the State University, with the degree of A. B., and afterwards taught school in Ventura for several years. During the great "boom," he was in the real estate business in Santa Paula, Ventura county. He prepared for the bar at Hastings College, from which he was duly graduated, and began the practice at Ventura in 1889. He has since been district attorney of Ventura county, and represented the county in the assembly at the legislative session of 1897. In 1895 he formed a law partnership with Lewis W. Andrews, with office at Ventura, under the name of Toland & Andrews. This still continues, although in the fall of 1900, Mr. Andrews (q. v.) removed to Los Angeles.

Mr. Toland is of Democratic politics. He is one of the strongest and brightest men in his profession and his party in the State. He was elected to his present office as a member of the State Board of Equalizaton in 1898, although his district was and is strongly Republican. He is a man of learning and address, a fine speaker, and has a very large practice, banks, oil companies, and other corporations being among his clients.

THE JUNIOR RANK

The JUNIOR RANK

NICHOLAS A. ACKER.

Nicholas A. Acker was born in Washington, D. C., March 20, 1864. He was admitted to the bar there in 1887. He located in San Francisco in 1889, and has ever since practiced in that city, making patent law a specialty. He has of late years come into a general practice, disolaying much ability therein.

HUGH S. ALDRICH.

Hugh Shafter Aldrich, whose ancestors came to America among the earliest settlers, was born at Galesburg, Michigan, May 20th, 1861. His father, Captain Job H. Aldrich, was killed at the battle of Nashville, December 15, 1864; his brother, Captain James H. Aldrich, is now with the United States forces in the Philippine Islands.

Mr. Aldrich was admitted to the bar by examination before the Supreme Court of California, July 26, 1892, and immediately commenced the practice of law at Oakland. He is a nephew of the old bar veterans and judges, Oscar L. Shafter, and James McM. Shafter, deceased, and Major General William R. Shafter, U. S. A.

WILLIAM H. ANDERSON.

William H. Anderson is one of the three lawyer sons of the distinguished lawyer, James A. Anderson, of Los Angeles, who is noticed in this History. Father and sons are practicing in that city, under the firm name of Anderson & Anderson, and are all together, except the youngest, C. V. Anderson, who conducts a branch office at Bakersfield.

William H. Anderson was born in Tennessee, in 1866. He is of Scotch-Irish ancestry, and a descendant of Judge William H. Trent, the first Chief Justice of New Jersey, after whom the city of Trenton was named. He began his professional career in California in 1889. He was assistant attorney-general under General W. F. Fitzgerald for four years —January, 1895, to January, 1899.

CHARLES A. ADAMS.

Charles A. Adams, son of ex-Judge A. C. Adams, by his second marriage, was born at Mokelumne Hill, Calaveras county, California, November 25, 1867. He removed to San Francisco in 1876, was graduated from the University of California in 1887, and later from Hastings College of the Law. On January 14, 1889, he was admitted to the Supreme Court of California. In February, 1891, he entered into law partnership with his father, under the firm name of Adams & Adams. The association still continues.

WILLIAM M. ABBOTT.

William M. Abbott was born in San Francisco, California, March 17, 1872. He comes from good English and Irish stock. His paternal grandfather was born in England, and emigrated to Canada in 1835. His maternal grandmother was born in northern Ireland; her father was an officer in the English army and served under Wellington at Waterloo.

Mr. Abbott's parents are Canadians, being born in the province of Ontario, Canada, in 1860. They moved to California and settled in San Francisco, where they have since resided.

Mr. Abbott received his education in the public schools of this State. In 1890 he entered the Hastings College of the Law, one of the affiliated colleges of the University of California, from which he was graduated with distinguished honors in 1893. During his course through the law college he studied in the law offices of Senator C. W. Cross, one of the recognized leaders of the California bar, and it is to his guidance and direction during this period that much of Mr. Abbott's future success may be attributed. After graduation from the law college, Mr. Abbott took an extended eastern tour, and returning in the latter part of 1894, commenced the practice of the law at the First National Bank building, 101 Sansome street. In 1895, he became as-

sociated in the practice of the law with Senator C. W. Cross, Senator Tirey L. Ford, and Mr. Frank P. Kelly, of Los Angeles, under the firm name of Cross, Ford, Kelly & Abbott. This was recognized as one of the leading law firms of California. Upon dissolution of the firm, Mr. Abbott continued his law practice. In November, 1898, Senator Tirey L. Ford was elected attorney-general of California, and in January, 1899, appointed Mr. Abbott, deputy attorney-general, from San Francisco.

The attorney-general assigned Mr. Abbott to the opinion department of his office, and he has been devoting his time and attention to that important and ever-increasing branch of the attorney-general's official business.

Mr. Abbott is among the promising lawyers

of the younger generation, who are rapidly coming into prominence throughout the State, taking the places made vacant by the death of the men of learning, who have gained eminence and renown in the building up of the jurisprudence of the commonwealth.

In April, 1900, Mr. Abbott was admitted to practice in the United States Supreme Court; whereupon he, with Attorney-General Ford, argued the railroad tax case of Smith (as receiver of the Atlantic & Pacific Railroad Company) vs. Reeves, State treasurer of California. This case was subsequently decided in favor of the State.

Mr. Abbott has been a member of the Union League Club of San Francisco since 1898.

H. P. ANDREWS.

Mr. Andrews was born in Marion, Mississippi, May 4, 1861. His father's family were descendants of John Andrews, who came to this country in 1640, from England, having descended originally from a Scotch family of that name. Captain Abraham Andrews, who was famous in the Revolutionary War, was the great grandfather of H. P. Andrews. The latter's father, William Penn Andrews, was born in the State of New York in 1825. When a boy he was taken by his parents to Ohio, where he was reared. When barely of age he and his brother, G. W. Andrews, who afterwards became a prominent Democratic politician in Ohio, and who was on the stand with Valandigham when the latter made his famous speech which caused his exile, and who also became a brigadier-general in the Federal army, founded the *Auglaize County Democrat*, in Wappokenetta, Ohio, which paper still exists.

During the year 1849 the father of our subject removed to Mississippi, and for a time engaged in journalism, also in mercantile and farming pursuits. There he was married to a Southern woman. He was a Union Democrat, and ardently supported Douglas. He enlisted in the Confederate army during the early part of 1862, and was made captain of Company I, Thirty-seventh Mississippi Infantry. He was engaged in the battle of Iuka, and in October, 1862, was killed in the battle of Corinth.

After the close of the war, Mrs. Andrews, the mother of H. P., in common with most other Southern people, was very poor. The son was reared on a poor farm and was engaged as a farm hand from his earliest recollection. At the age of fourteen years he was given charge of the farm, and from that time on supported his mother and sister. His education was only such as could be obtained from the Marion Academy, a private institution which he attended after saving the money to pay the expenses of his own and sister's schooling.

Mr. Andrews began the study of law several years before he was of age, while still on the farm, and later on he went into a law office, and continued his reading. He was admitted to practice by the Supreme Court of Mississippi in 1882. He followed the profession and engaged in journalism until 1886, when he moved to Texas. He remained there until January, 1888, when he came to California, and settled at Red Bluff, where he has been engaged in the practice of law ever since. He has had a large business for many years, and good success and prosperity.

Mr. Andrews has always been actively engaged in Democratic politics, and usually attends the State conventions, and meetings of the State central committee. In 1894 he was elected district attorney of Tehama county, and served in that capacity four years. At the close of his term he declined to become a candidate for re-election. In 1898 he was the Democratic nominee for attorney-general, and went down with his ticket. He ran several thousand votes ahead of the average vote of his party.

Mr. Andrews was married in 1893 to Miss Lilly Gay of Willows. She is a native daughter, and a direct descendant of the poet, John Gay. Her ancestors served in the Revolutionary War with distinction. Mr. Andrews is past grand in the Odd Fellows Lodge of Red Bluff, and has been a delegate to the Grand

Lodge. He is past chief ranger of the Foresters of America, and has attended several of their Grand Courts. He is also a Master Mason.

W. A. ANDERSON.

W. A. Anderson, of Woodland, was born in the city of Sacramento, on August 6th, 1875. His parents dying while he was very young, he moved to Winters, where he read law, and was admitted to the bar on December 28th, 1896. He began the practice of law in the spring of 1898, in Woodland, and the following July, sickness overtaking the district attorney of Yolo county, the Hon. R. E. Hopkins, Mr. Anderson assumed the duties of the

office, and held the position until the expiration of Mr. Hopkins' term of office. On the 10th day of April, 1899, he was elected city attorney of Woodland.

RUSS AVERY.

Russ Avery was born in Olympia, the capital of Washington, which state was then a territory. He received most of his education in the State of California. He was graduated from the Los Angeles High School in 1890, and from the University of California in 1894. He attended Hastings Law College the next year, and was admitted to the bar in 1895. He then went to the Harvard Law School, where he was graduated with the degree of LL. B. *cum laude* in 1897. After a short tour in Europe, he opened an office in Los Angeles, where he is now practicing with good success. His name has already become familiar to the bar and the public.

EDWARD J. BANNING.

Mr. Banning is a native of the great city where, at the age of twenty-five, he became assistant United States attorney. He was born June 6, 1873, and was graduated from St. Ignatius College, San Francisco, in 1892, with the degrees of B. S. and M. S. He studied law in the office of Hon. Barclay Henley (q. v.) of that city, attending also the Hastings College of the Law, and was graduated from the law college with the degere of LL. B., in

1895. He became assistant United States attorney under Hon. Frank L. Coombs, on December 1, 1898, and is still occupying that important position.

LEWIS W. ANDREWS.

Lewis W. Andrews, of the Los Angeles bar, was born at Mt. Vernon, Missouri, April 22, 1869. Mr. Andrews comes of a family of lawyers. His father, Lindley M. Andrews, practiced law in Missouri and Kansas for a number of years. His two older brothers, Horace and A. V., comprise the firm of Andrews Brothers of Norwalk, Ohio, who are well known through northern Ohio as attorneys and advocates of great ability.

Lewis W. Andrews received his early education in the public schools of Ohio and Illinois, which was supplemented by a course in the collegiate department of the Northern Illinois Normal School at Dixon, Illinois, from which institution he graduated in 1887, with the degree of B. S. He studied law for a number of years under the tuition of his father and his brothers, and subsequently with Hon. B. T. Williams, Superior Judge of Ventura county.

He has been a resident of California for about twelve years, during which time he has been identified with many of the new and progressive enterprises of Southern California. In the fall of 1891 he became the secretary of Throop Polytechnic Institute of Pasadena, being the first incumbent of that position, which he held for two years, during which time he was also instructor in history. In 1895 Mr. Andrews settled in Ventura, where he formed a partnership, for the practice of law, with Hon. T. O. Toland (at present member of the State Board of Equalization), under the firm name of Toland & Andrews, who during the past six years have

been attorneys for the American Beet Sugar Company, owners of the great factories at Oxnard and Chino; Bank of Oxnard, Santa Paula Water Works, and other leading corporations of Ventura county. The firm enjoyed a large and lucrative practice.

In the fall of 1900 being tendered the clientage of a number of corporations, Mr. Andrews moved to the city of Los Angeles to engage further in the practice of his chosen profession, and is now the legal representative of a number of the wealthiest corporations in Southern California. His practice is large and general, his time being occupied principally by corporation and civil busness.

As has been stated before in this History, "The modern lawyer is essentially a man of affairs." This is true of Mr. Andrews, who is essentially a *business lawyer*. While he has been very successful as a trial lawyer, yet his reputation has been established not so much by his ability to try causes for his clients as his success in advising them, and skill in managing their affairs in such manner that a resort to the courts is seldom necessary. He holds official positions in the Los Angeles *Herald*, the Pacific Electrical Works, Colonia Improvement Company, Bank of Oxnard, and other corporations, of which he is the legal adviser.

In 1892 Mr. Andrews was married to Miss Abbie Crane of Ventura county. He has two children, a boy and a girl. He is a Republican in politics.

DONALD BARKER.

Donald Barker of the firm of Flint & Barker was born at Hartley, Ontario, Dominion of Canada, March 13, 1868. His father was William Barker, a merchant, who died when our subject was two years old. The son removed to Rochester, New York, when eleven years of age, and attended the public schools there and at Cleveland, Ohio. He spent two years on salt water, before the mast, and afterwards settled in San Francisco, California, where he occupied responsible mercantile positions until 1894. In that year he commenced the study of law in the office of Allen & Flint, Los Angeles. He was admitted to practice by the Supreme Court of California in April, 1896, and remained in the office of Allen & Flint until the dissolution of that firm, in the same year, by reason of the election of Judge M. T. Allen to the Superior bench, and the appointment of Frank P. Flint to the office of United States attorney for the southern district of California. A new partnership was then formed with Mr. Flint, which still continues. The firm has the business of several financial institutions, and enjoys a large practice.

WALTER J. BARTNETT.

Walter J. Bartnett was born at Pacheco, Contra Costa county, California, May 22, 1866. He was educated at the Boys' High School, San Francisco, the University of California (College of Letters), and the Hastings College of the Law, receiving from the university the degree of A. B., and from the law college that of LL. B. He was admitted to the bar of the State Supreme Court, in June, 1890, and began practice at San Francisco. In 1895 he became a member of the old-established law firm of Gunnison & Booth, which still continues as Gunnison, Booth & Bartnett. This native son is a man of hign ideals and the purest character, and attained at an exceptionally early age a prominent place in his profession and a large practice. We have watched his course with much interest from its beginning, in 1890.

WILLIAM A. BEATTY.

William Adam Beatty was born December 23, 1861, of Irish parentage, his father being a capitalist. He is a graduate of the University

of California, and was admitted to the bar by the Supreme Court at San Francisco, June 30, 1887. He has ever since been engaged in law practice in that city. He is a very competent attorney, a man of strong character, well-liked, and has been busy and successful at the bar.

WILL M. BEGGS.

Among the younger members of the bar at San Jose we find Will M. Beggs, who occupies a suite of three offices in the Knox block. He was born September 2, 1867, in Mercer county,

Pennsylvania. His early life was spent "going west" in a covered wagon, with the other members of his family, and in that way he traveled over Tennessee, Iowa, Kansas and Missouri, arriving finally in the beautiful Santa Clara Valley, at the age of six years. Between attending the district school and doing "chores" at home on the farm, his time was occupied until he was about sixteen, when for two summers he was employed as storekeeper at one of the large lumber mills near the Yosemite Valley. At eighteen he passed the "county examination," and received a certificate entitling him to teach school. He taught his first and last school four terms, and declined a further engagement for the opportunity of more lucrative employment in farming, to which occupation he turned his attention in the fall of 1888. In that year, with the assistance of three other parties, he built the first successful cheese factory in then Tulare, but now Kings county, California. This employment soon grew irksome, and in the spring of 1889 the ranch was sold and the proceeds invested in a retail mercantile business in Los Gatos. A successful business was soon established, and continued for over a year, until, in April, 1890, it was wiped out by a disastrous conflagration, which entailed a very heavy loss.

During the summer of 1891, there being no opening that seemed to invite investment, and after a very careful survey of the future and the opportunities open to a young man without trade and no special occupation, with a growing family on his hands, Mr. Beggs concluded to try the law as a profession, and for that purpose, in the company of his wife and child, he spent the two years ending June 30, 1893, at Ann Arbor, Michigan, upon which latter day he graduated with honors from the law department of the famous university in a class of 325 law graduates.

Immediately after graduating he returned to Los Gatos, Santa Clara county, where he made his home for the next seven years, but maintained his office at San Jose. During that period he occupied the position of city attorney of Los Gatos.

In the fall of 1800, as his practice was increasing to such an extent, Mr. Beggs moved to San Jose, where he now resides, and expects to make it his home. He has one of the finest offices in San Jose, and has one of the largest practices of the 125 attorneys in that city. While devoting most of his attention to general practice, he has found time to become interested in oil and mining, from which investments he has come out many thousands of dollars ahead. He has push and energy and is very attentive to the details of his cases and to this alone does he attribute his success in his chosen profession.

RICHARD BELCHER.

Richard Belcher was born at Marysville, in this State, on January 17, 1868. He was graduated from Amherst College in 1889, with the degree of A. B., and from Hastings College of the Law in 1892, with the degree of LL. B. He has been in practice at Marysville since July, 1892.

Mr. Belcher has been referee in bankruptcy since August, 1898, when he was appointed by United States District Judge De Haven. He was appointed a trustee of Chico State Normal School, by Governor Gage, in May, 1899. He has been in charge of the estate of Judge Isaac S. Belcher since the latter's death, in November, 1898.

Mr. Belcher's father was Isaac S. Belcher, just named, once Judge of the Supreme Court of California. His mother, Mrs. Adeline N. Belcher, is living, and resides in San Francisco. She is the eldest daughter of the late William T. Johnson, cashier of the Granite National Bank of Augusta, Maine, sometime speaker of the house of representatives of Maine, mayor of the city of Augusta, etc. W. C. Belcher, late of the San Francisco law firm of Mastick, Belcher & Mastick, and Hon. E. A. Belcher, recent Superior Judge of the city and county of San Francisco, were uncles of his.

Mr. Belcher was united in marriage to A. Josephine Ward, at Amherst, Massachusetts, on June 6, 1892, and has two children. He is a Knight Templar, and a thirty-second degree Mason. He has proven worthy of his heritage, and turned his splendid opportunities to good

account. He is a strong, steady, self-possessed character, and at the age of thirty-three holds an advanced place in the profession.

THEODORE A. BELL.

The present District Attorney of Napa county, was born in the city of Vallejo, California, on the 25th day of July, 1872. At the age of nineteen he became a teacher in one of the public schools of his county, and while

engaged in this pursuit prepared himself for admission to the bar. At his majority he successfully passed an examination before the Supreme Court. One year later he was nominated for district attorney by the Democratic party. Although the county gave the head of the Republican ticket a majority of over five hundred, he was elected by a majority of over four hundred. After serving four years he was again nominated for the same office in 1898, and re-elected by a large majority, His present term will expire in January, 1903.

ALLAN BRANT.

Allan Brant, of the law firm of Brant & Brown, of San Jose, is a native of Michigan and passed through the common schools of that State. He graduated from the Benton Harbor College with the class of '89 and afterwards taught in the public schools in Michigan and Indiana until the summer of 1894. In the fall of '94 he entered Stanford University and remained there one year in the study of law. In December, 1895, he was admitted on examination before the Supreme Court, to the bar of California, and in the following February took up the practice of law in San Jose. In January, 1897, he formed a law partnership with F. B. Bown, which still continues.

When the war with Spain broke out, Mr. Brant enlisted in the First California U. S. volunteer infantry, and went with his regiment to the Philippine Islands, where he served in the Spanish-American war, 1898, and in the Filipino-American war, 1899. Among engagements participated in by him were the assault on the capture of Manila from the Spanish, August 13, 1898, and the engagement with the Filipino enemy at Pateros, February 14, 1899. At the latter engagement he received a severe gunshot wound in the shoulder, in the charge upon the enemy, and was carried from the field. From that time he was in the hospital at Manila until May 22nd, when he was discharged for disability from the effects of his wound. He still carries the bullet somewhere in his body, a constant reminder of his thrilling experience. After his discharge he visited China and Japan and later returned to San Jose, California, where he resumed his old place in the firm of Brant & Brown.

A letter received by the publisher of this History under date of January 16, 1901, jointly signed by Messrs. F. B. Brown and Allan Brant, states that they have dissolved partnership.

J. H. BIDDLE.

Julian Hiester Biddle, of San Jose, was born in the old and picturesque town of Elkton, the county seat of Cecil county, Maryland, and situated on the eastern shore of that State, on the 13th day of August, 1874.

His family has been represented, since the early history of the country, in legal and military circles.

Coming to San Jose, from the Old Line State in his early boyhood, he attended the public schools and the University of the Pacific; and after studying law under his father, Noble T. Biddle, Esq., he was admitted to practice as an attorney and counsellor by the Supreme Court sitting at San Francisco, January 3, 1898.

Mr. Biddle is now practicing law with his father, as a member of the firm of Biddle & Biddle, in Paul block, San Jose.

P. A. Bergerot

P. A. BERGEROT.

P. Alexander Bergerot was born in San Francisco, February 5th, 1867, of French parentage. He received his preliminary education in the public schools of San Francisco, graduating first from the Lincoln Grammar, and later from the Lowell high school. In both institutions he stood at the head of his class. He then went to France to perfect himself in the French language. He graduated from the Lyceum of Pau and the Bordeaux branch of the University of France in 1889, with the degree of bachelor of letters. On his return to San Francisco in 1889, he took a complete course, under Professors E. W. McKinstry and Charles W. Slack, in the Hastings College of Law, ranking No. 1 on graduating therefrom. Since July, 1892, he has been actively engaged in the practice of his profession. He has an extensive business among both French and Americans throughout the State.

In politics he has made himself popular and well-known by his services and speeches for the Republican party, and in his advocacy of pure politics. He has been a member of the Republican State committee occasionally and of many State and municipal conventions. He was a member of the recent charter convention of San Francisco. In 1892 he was called upon to deliver an oration in English at the celebration of the 14th of July in San Francisco. In 1893, he delivered the funeral oration in English, at the Mechanics' pavilion, before an audience of over ten thousand people, on the occasion of the obsequies held in memory of the murdered president, Carnot. In 1897, he was selected president of the day for the 14th of July celebration, and in 1899 grand French orator of the day.

In 1898, he was elected school director on the Republican ticket, and chosen as president of the board of education of San Francisco.

BENJAMIN F. BLEDSOE.

Benjamin F. Bledsoe was born in San Bernardino, California, in February, 1874. He attended the public schools of that city, and was graduated from the High School thereof in 1891. He entered Stanford University in 1892, graduating from the departments of history, economics and law in 1896. While in Stanford Mr. Bledsoe took great interest in intercollegiate debating, being himself on the regular Stanford-California debate in his junior year. He took his examination before the Supreme Court in Los Angeles in October of 1896, and immediately entered upon the practice of his profession in his native city in partnership with his father, R. E. Bledsoe. Their practice has been general, and extends over all the southern counties of the State. In 1898 Mr. Bledsoe was appointed referee in bankruptcy by Judge Wellborn. In August, 1900, upon the earnest solicitation of his friends, he was a candidate before the Democratic county convention for the nomination for Superior Judge. He was opposed for the nomination by two of the leading and most prominent lawyers of the county, yet, after a hard fight, he gained the coveted honor. The campaign that ensued was the hardest ever fought in San Bernardino county, which is evidenced by the fact that, although the Republican majority in that election was about 800, yet the vote on Superior Judge between Mr. Bledsoe and his Republican opponent resulted, apparently, in a tie. Proceedings, begun by Mr. Bledsoe, to contest the result declared, and to adjudge him entitled to the office are still pending, and his friends maintain that they will yet call him "Judge."

John L. Campbell is the defendant in this case. Judge Campbell, however, was not a candidate for the office at the last election; he is "holding over," having been one of the Superior Judges for the full term of six years.

At the recent election there were three candidates: B. F. Bledsoe, Democratic; C. C. Bennett, Republican, and E. E. Duncanson, Socialist. Bledsoe and Bennett each received 2864 votes, and Duncanson 154 votes. The board of supervisors declared a tie vote, and consequently there could be no statutory contest instituted, and the present proceeding was begun in lieu thereof. It is a statutory proceeding, in the nature of a writ of *quo-warranto* at common law, or, rather, a modification of that remedy, as provided by sections 803 to 810, inclusive, of the Code of Civil Procedure, and is brought for the double purpose of testing the right of John L. Campbell to hold the office, and also to establish the right of B. F. Bledsoe to the same. It is an open question in this State as to whether a recount of the ballots cast at the election can be had in this sort of proceeding, or in any case where a tie has been declared by the canvassing board.

Mr. Bledsoe married, in 1899, Miss Katherine M. Shepler, Stanford '98, who was a resident of Council Bluffs, Iowa.

F. B. BROWN.

F. B. Brown, of the firm of Brant & Brown, California, was born and raised on an Illinois farm, where he attended the common district school in winter and worked on the farm during the busy season. He graduated from the Galva high school in 1881 and from Knox College, Galesburg, Illinois, as a member of the class of '85. He soon removed to western Kansas and was one of the first settlers in what was afterwards Grant county, where he engaged in farming and stock raising, and at the same time acquired title to a considerable tract of government land by occupation, residence and cultivation. Upon the organization of the county in 1888, he was elected its first county superintendent of schools, and was twice re-elected, holding that office until January, 1893, during which time he also busied himself in studying law. He also occupied a seat in the lower house of the Kansas legislature.

Mr. Brown came to California in 1893, and, still prosecuting the study of law, was admitted before the California Supreme Court in

1895. He began practice in San Jose. In January, 1897, he formed his present patnership with Allan Brant, and has since been actively engaged in practice. In 1888 Mr. Brown married May L. Miller of Rock Island, Illinois, and has three children, all boys.

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HENLEY C. BOOTH.

Henley Clifton Booth was born in St. Clair County, Missouri, December 24, 1873. His paternal great-grandfather was in the Colonial army in the Revolution, his paternal grandfather in the United States army in the War of 1812. His father and two of his father's brothers were in the Union army in the Civil War. One of his father's brothers was in the Confederate army. His maternal grandfather was in the United States army during the war with Mexico. In 1885 his parents, Robert L. and Maria J. Booth, came from Missouri to California, locating at Los Alamos, Santa Barbara county, living there for a year, and thence removing to Santa Barbara where they have since resided. He attended the public schools of Santa Barbara, graduating from the high school in May, 1890, from which time until his admission to the California Supreme Court in April, 1895, he was engaged in newspaper and magazine work,

and in the study of law in the office of B. F. Thomas, Esq., of Santa Barbara. He has practiced his profession at Santa Barbara since his admission to the bar. Early in June, 1898, Mr. Booth enlisted as a private in Company "H," Seventh California U. S. Volunteers, and was discharged with his regiment in December, 1898, as a corporal. In December, 1899, he was elected city attorney of Santa Barbara, taking office January 1, 1900, as the first city attorney under the new charter, which took effect at the same time.

Mr. Booth is a member of a number of secret orders and an ensign in the Naval Militia, National Guard of California, in which organization he takes much interest.

WILLIAM I. BROBECK.

William Irwin Brobeck was born in Rochester, Pennsylvania, on the 17th day of July, 1869, of Scotch-German parentage. He came with his parents to California when a lad of six years, and with them settled in Nevada City, where he received his early education. He removed to San Francisco and completed the high school course in that city, afterwards entering Hastings College of the Law, from which institution he was graduated in 1892. In January, 1893, he received the appointment

of assistant city and county attorney of San Francisco from the Hon. Harry T. Cresswell, which office he has filled under several consecutive administrations to the present time.

Mr. Brobeck comes of a family of lawyers. His great grandfather, William Irwin, occupied the Superior bench of Beaver county, Pennsylvania, for thirty years.

Mr. Brobcek has in the course of his official career successfully conducted much important litigation. He has proved himself a lawyer of sound principles, well versed in the law, a close reasoner, and hard student. He is a prominent member of the I. O. O. F., and various other fraternal organizations.

JUDSON BRUSIE.

Judson Brusie, a member of the Sacramento bar, is a native of La Porte, Indiana, born March 28, 1864, his parents being Luther and Margaret (Coffin) Brusie. Luther Brusie was born at Winsted, Litchfield county, Connecticut, January 21, 1822, and was a son of a soldier of the War of 1812, and grandson of a Revolutionary veteran, while his great-grandfather served in the colonial forces in the

William A. Bowden

French and Indian Wars. He (Luther Brusie) came to Indiana when young, with his parents. After finishing his common school education, he began the study of medicine, and on the 27th of February, 1847, was graduated at Indiana Medical College, Indianapolis. In the fall of 1850 he came out to California across the plains, and engaged in merchandise at Put's Bar, in Amador county. In 1854 he went back to Indiana, and gave his attention to the practice of his profession until the breaking-out of the Civil War. He offered his services in behalf of his country, and on the 22d of October, 1861, was commissioned by Governor Oliver P. Morton as assistant surgeon of the Forty-fifth regiment (Third cavalry) Indiana volunteers. In consequence of injuries received in action, he was honorably discharged from the service. In 1869 he again came to California, bringing his family, via Panama. He located in Amador county, where he was a physician of high standing and a prominent citizen until his death, which occurred in May, 1887. He was a stalwart Republican, and devoted to the interests of his party. He represented the district in which he resided in the State legislature of 1880. He was an active member of the State Medical Society, and of the Grand Army of the Republic.

Judson Brusie, with whose name this sketch commences, was reared in Amador county, and educated there and at the University of the Pacific, in which institution he took the Latin and scientific course. He commenced reading law with Judge A. P. Catlin, and continued his legal studies in the office of Clunie & Knight, San Francisco. He then returned to Amador county, and was there admitted to the bar in 1885. Mr. Brusie represented Amador county in the legislature of 1887-88, being the youngest member of the assembly, and he has since represented Sacramento county in the same body in the twenty-ninth and thirty-first sessions.

WILLIAM A. BOWDEN.

This gentleman was born in Western New York, in December, 1864. In early youth he moved with his parents to Southern Indiana, and in the public schools of that state were laid the first foundations of the training and education that marked his after life. In 1876, while yet a mere youth, Mr. Bowden moved to this State, finally locating at San Jose, where his father engaged in farming. In the excellent public schools of that city, and under the tutelage of able professors at Santa Clara College, Mr. Bowden's school training was completed. The Supreme Court of California admitted him to the practice of law in 1886, although he did not actively engage in practice until four years later. During the interim he entered into public life, serving as court clerk under the late Francis E. Spencer, then judge of the Superior Court of Santa Clara county.

Upon the expiration of his term of office, Mr. Bowden immediately went into practice, locating in the Bank of San Jose building, where he has ever since maintained his office. He took rank at once among the ablest members of a bar regarded as one of the best in California, and composed mostly of men older than himself. The celerity of his ascent to distinction in his profession may be inferred from the fact that at this time many of the largest corporate interests of the wealthy and populous county of Santa Clara are guided by his judgment. In both his private and professional life Mr. Bowden is known as a man of positive character; strong in his convictions and fearless and forceful in expression, his has not always been a path of roses. But all this has been compensated for by the highest measure of professional success. In 1894 Mr. Bowden was married to Alice I. Hobbs, the youngest daughter of Celden X. Hobbs, one of the pioneers of California.

HENRY E. CARTER.

Mr. Carter is one of a number of prominent members of the Los Angeles bar who are natives of California. He was born September 26, 1865. His father, a native of Connecticut, was a civil engineer. Mr. Carter received his education in both public and private schools, and prepared himself for the bar by reading in private law offices at Los Angeles. He went to that city to live in 1888, at the age of twenty-three, and was admitted to the bar by the State Supreme Court in April, 1890. He has always since been in good practice there. For some years he has been in partnership with Mr. Isidore B. Dockweiler, a native of Los Angeles, under the firm name of Dockweiler & Carter. The gentlemen are of opposite politics. Mr. Carter further differs from his partner in that he is not a married man. The firm of Dockweiler & Carter stands very high and strong at the bar of Southern California. It is perhaps the most advanced of the younger firms of that great section, no other firm of the age leading it in point of ability or amount of business.

Mr. Carter was deputy attorney-general under Hon. W. F. Fitzgerald for a full term of four years, which ended in January, 1899. In November, 1900, he was elected, as a Republican, to the assembly from the seventy-fifth district, which comprises one-third of Los Angeles city. He is serving in that body as this History is being closed.

PAUL BURKS.

Mr. Burks, who has not yet attained the age of thirty years, comes from a long and illustrious line of Southern ancestors. He was born in Logan county, Kentucky. He is the third son of Dr. Jesse H. Burks, a veteran of the Confederate Army, and Sabina Dismukes Burks. At an early age his parents moved to Los Angeles, California, where his father was prominently identified with the progress and development of the city until the time of his death.

Mr. Burks received an academic and high

school education, read law, and entered the celebrated Cumberland University, at Lebanon, Tennessee. He passed the bar examination and was admitted to the bar of Tennessee. He received the degree of Bachelor of Laws from the university named. He subsequently pursued post graduate work, and had conferred upon him the degree of Master of Laws by the Columbian University.

After leaving college, he returned to his home, was admitted to the bar of California in 1898, and entered upon the active practice of his profession in Los Angeles. He made his initial bow to the public when associated with Hon. Will A. Harris and Earl Rogers, Esq., as junior counsel in the successful defense of William Alford, who was tried for the murder of Jay E. Hunter, a member of the Los Angeles bar.

Mr. Burks is a staunch Republican in politics and takes an active interest in party affairs. He formed a partnership with Philip B. Voorhees, Esq., and is now senior member of the prosperous firm of Burks & Voorhees, with offices in the Henne building, Los Angeles. The firm represents large individual and corporate interests.

JOHN L. CHILDS.

John L. Childs, district attorney of Del Norte county, was born on the 27th day of May, 1863, in England. He was taken to the state of New York by his parents at the age of three years, and was brought up at Indian Falls, in the western part of that state. In 1885 he was graduated from Stakey Seminary, located on the western bank of Seneca Lake, in which institution he taught for two years. In 1888, while acting as principal of Greenville Academy, at Greenville, New York, his health failed, and he went to Southern California, where he resided for two years, going to Del Norte county in 1891. He there engaged in the newspaper business, as proprietor of the *Crescent City News.*

In 1892 Mr. Childs was elected county clerk of that county, and was re-elected in 1894. In December, 1895, he passed the examination before the Supreme Court of California. He resigned the office of county clerk in November, 1896, to accept the position of minute clerk of the State senate, and in the spring of 1897 began the practice of law at Crescent City. In 1898 he was elected district attorney of Del Norte county, which office he now holds. Mr. Childs is a Republican in politics, and was one of the delegates from the First congressional district to the Republican national convention held at Philadelphia, in June, 1900.

JOSEPH F. CHAMBERS.

Mr. Chambers was born in Clinton county, Illinois, April 3, 1862. His father was a farmer. The son remained on the farm until the age of nineteen, except winters, when he was in school. He attended the district school and graded school at Clement, Illinois, and the State Normal School at Ypsilanti, Michigan. He began the study of law in the office of Hon. E. P. Allen, at Ypsilanti, but before admission to the bar his study was interrupted by the severe illness of his father. He came West in 1881, and was engaged for about two years in railroading in Colorado and New Mexico.

Mr. Chambers settled at Los Angeles in 1884. He was clerk of the Justice's and Police Court under Judge Austin for about nine years, during which time he resumed the study of law. He was admitted to practice in 1890. After leaving the position of clerk under Judge Austin, he engaged in general practice in Los Angeles until 1897, when he was appointed a deputy by Hon. J. A. Donnell, district attorney, and was later re-appointed by James C. Rives, the present accomplished incumbent of that office.

Howard A. Broughton

HOWARD A. BROUGHTON.

Hon. Howard Anthony Broughton was born in the city of Santa Cruz, California, on the 6th day of October, 1863, the son of William Wallace Broughton, who was born in Tonawanda, New York, in 1836. The father was reared as, and has followed the pursuit of journalist, and is also an attorney-at-law. He, the father, came to California in 1858, and settled in Santa Cruz, California, where the son was born. The latter moved with his parents, while a child, to Santa Barbara county, where he grew to manhood, receiving his education in the public schools. He entered the Hastings College of the Law in 1885, and was graduated therefrom with honors in 1888, receiving the degree of LL. B., when he was admitted to practice by the Supreme Court. Meantime, he entered the offices of A. A. Sargent, ex-United States senator, and Frank M. Stone, in San Francisco, and there finished his practical course of study of the law. He remained in the office of Sargent & Stone for something like three years, leaving to take up the practice of law in Pomona, Los Angeles county, California, in 1890.

Mr. Broughton quickly obtained recognition from the people of Pomona by reason of his merit and capability. He is at the present time attorney for the leading banks, the local water company, and various corporate interests centered at Pomona. He has always taken an interest in politics, and for years has been the representative of his section of the county, in city, county and State conventions of the Republican party. In November, 1900, he was elected to the assembly from the Seventy-first district by the largest majority ever given a representative in that district. His ability was immediately recognized in the late thirty-fourth session of the legislature, and, contrary to precedent, this being his first term, he was placed at the head of the committee on corporations of the assembly.

C. W. COBB.

Charles Wellington Cobb was born at the City of Gilroy, Santa Clara county, California, on August 15th, 1872. His parents are old residents of Santa Clara county. His family being engaged in commercial pursuits, and he being an only son, he originally prepared himself for a career in that line, receiving, in addition to an otherwise liberal education, one in, and making a special study of, commercial affairs and banking. For a number of years he had valuable practical experience in those branches. His natural inclinations and desires, however, soon led him to the law, and after a thorough course of study under able tutorage and supervision, and a course in the practical affairs of law and practice in the office of Daniel W. Burchard, of San Jose, he was admitted to the bar by the Supreme Court of the State of California in May, 1897. From that time, and up to September, 1899, he was associated with Mr. Burchard in the active practice of his profession. On September 1st 1899, he formed a partnership with E. A. Rea, the subject of another sketch, under the firm

name of Cobb and Rea, and is now engaged in practice at San Jose, as a member of that firm.

E. C. COOPER.

Edgar C. Cooper was born at Eureka, in this State, on the 6th day of October, 1868. He was educated in the public schools of Eureka. He entered Hastings College of the Law in 1888, and was graduated in the class of 1891. He immediately returned to the city of Eureka, and entered upon the practice of his profession. He has since been engaged in some of the more important cases before the courts of Humboldt county.

In 1898 Mr. Cooper was elected to the office of district attorney of Humboldt county, receiving the highest vote and largest majority of any on his ticket. He has been very successful in the office, and has lost but one case in the two years of his incumbency.

Mr. Cooper's father was born in England,

coming to this country at the age of six years. For nineteen years he was receiver of the United States Land Office at Humboldt, California. Mr. Cooper's mother was born in Maine, and was a direct descendant of Colonel Prescott, the commander at Bunker Hill. Her maiden name was Wilder, and she came from the same stock which produced the Wilders of Massachusetts.

CHARLES T. CONLAN.

Charles Thomas Conlan, a Judge of the Police Court of San Francisco, was born in Sacramento city, California, September 6, 1864. He is of Irish parentage, and was educated at Santa Clara College. He was admitted to the bar on the 4th of May, 1886. After serving a term as prosecuting attorney of the San Francisco Police Court, he was, in November, 1892, elected, on the Democratic ticket, as Judge of that court, and, by successive re-elections, has held the office ever since January, 1893.

J. S. CALLEN.

The above is a portrait of J. S. Callen, Esq., residing at San Diego, California, recognized by the thousands who know him as a lawyer and a man in every sense of the word.

ROBERT M. CLARKE.

At the age of twenty-one years this gentleman has a good law practice, and stands as high as any man in Ventura county in popular estimation. He has established a name for devotion to duty, and for ability in his calling.

Mr. Clarke was born in Ventura county, March 5, 1879. He is a graduate of the High School of Santa Paula, but not of any law school. He was admitted to the bar in April, 1900. He is a prominent Mason, and is president of Santa Paula Parlor, Native Sons of the Golden West. He married, at Carpinteria, at the close of the year 1900, Miss Edna Thurmond, a successful school teacher of his county. At the election in November, 1900, he was chosen, as a Republican, a member of the assembly by a majority of 413 votes over Hon. W. E. Shepherd, the city attorney of Ventura, and is serving in that body as this History is being printed. He is the youngest member of the legislature. On the

day succeeding his election to the assembly, November 7, his former law partner, George E. Farrand, a Democrat, aged twenty-two, was appointed county clerk of Ventura county.

WILLIAM T. CRAIG.

William T. Craig was born at Watsonville, Santa Cruz county, California, March 8, 1866. His father, Judge Andrew Craig, was district

attorney and County Judge of that county, his official period being from 1872 until 1880. In the latter year he removed with his family to San Francisco. William T. Craig, after

R. H. Countryman

spending two years in the office of the city and county attorney of San Francisco, entered the State University, at Berkeley, in 1885, taking the course in letters and political science, and in 1889 he was graduated with the degree of Ph. B. Immediately afterwards Mr. Craig entered Hastings Law College, taking an irregular course under Judges McKinstry and Slack, and in 1890 was admitted to practice by the Supreme Court at the Sacramento term. He then formed a partnership with his father in San Francisco, and continued to practice law in that city, under the firm name of Craig & Craig, until 1893, when he removed to the city of Los Angeles. Shortly thereafter he married Miss Etta Brown of San Francisco, and he now resides with his family and practices his profession in Los Angeles.

Mr. Craig is a member of various clubs and secret societies, in which he takes an active interest. In politics he is a Democrat, but since 1892, in which year he ran, and was defeated, for city and county attorney of San Francisco, he has taken no active part in politics.

Mr. Craig has given his special attention in his practice to corporation and mercantile law, in which branches he has succeeded in establishing a lucrative business. In 1900 he formed a partnership with Eber T. Dunning, under the firm name of Dunning & Craig, with offices at suites 322, 323 and 324 Bullard Building, Los Angeles. The firm are attorneys for the Wholesalers' Board of Trade of Los Angeles, for a large number of wholesale establishments and for some of the leading trust, mining, title abstract, building and loan, mercantile, and other corporations in Southern California.

R. H. COUNTRYMAN.

Robert Harmer Countryman was born in Philadelphia, Pennsylvania, September 11, 1864. While attending school his health was impaired by overstudy, and he came to California for rest and recreation, intending to return to Philadelphia. He improved so rapidly that he determined to remain here. Entering Hastings College in August, 1885, he was graduated therefrom in June, 1888. He went into the office of Jarboe, Harrison & Goodfellow, San Francisco, shortly before he began attending the law school, and remained with that firm until Judge Harrison went on the Supreme bench, in January, 1891. Thereafter he was associated with Mr. Jarboe until his death, in July, 1893. He has been practicing alone since that time.

Mr. Countryman's first American ancestor came from Holland, settling in New Amsterdam, now New York. His great grandfather, John Countryman, was a captain in the Revolutionary army. He was with Washington at Valley Forge. After the war he settled at Philadelphia, where his son, Christian, and grandson, George, were born, and carried on business. George was the father of our subject. His mother was a Quakeress. His wife, our subject's mother, was Margaret Goodsman. She was born in Musselby, near Edinburgh, Scotland. Her family belonged to the nobility, one of her ancestors being Sir James McGill, who was a Lord of Sessions in Scotland in 1629. But our California attorney, an ardent American, attaches small importance or value to the family crest, seal, etc.

Mr. Countryman was married, June 26, 1889, to Miss Jennie A. McWilliams, of Vallejo, California, and has two children, Harmer, aged ten, and Ralph, seven years. He is past master of Occidental Lodge No. 22, F. and A. M. He is junior warden of St. Paul's Protestant Episcopal Church.

ARTHUR J. DANNENBAUM.

Arthur J. Dannenbaum was born at Gilroy, California, July 6th, 1876. He attended the public schools of San Francisco and the University of California, graduating from the latter institution in 1898 and receiving the degree of bachelor of philosophy. While at college he was upon two occasions selected as one of the participants in inter-collegiate oratorical contests with Stanford University, acquitting himself creditably in these debates. While pursuing his studies in the academic department of the university, he also, during the last year of his college course, began the study of law. He was admitted to the Supreme Court of California in 1899, and is now engaged in the practice of his profession in San Francisco. In politics he is a Repubican.

MARION DE VRIES.

Marion de Vries was born near Woodbridge, San Joaquin county, California, August 15, 1865. He attended the public schools until he was fifteen years of age, when he entered San Joaquin Valley College, from which he graduated in 1886, with the degree of doctor of philosophy. He then entered the law department of the University of Michigan, whence he graduated in 1888, with the degree of bachelor of law. He was admitted to practice before the Supreme Courts of Michigan and of California in the same year, and on January 1, 1889, commenced the practice of law at Stockton with John B. Hall. Later in the same year he formed a copartnership with W. B. Nutter, a leading lawyer of Stockton, and under him acted as assistant district attorney for San Joaquin county from January, 1893, to February, 1897.

He was elected by the Democrats to the fifty-fifth congress, and re-elected to the fifty-sixth, being indorsed by the People's Party, and received nearly 5,000 majority over his Republican competitor.

In June, 1900, Mr. de Vries, while serving in congress, was appointed by President McKinley a member of the board of general appraisers at New York city, the law requiring the President to appoint at least one member of the board from a party of opposite politics.

The President assured Mr. de Vries of the great gratification with which he had heard from the public men of all parties with whom

he had consulted, only words of praise regarding him, and said he made the appointment with peculiar pleasure, especially as the Pacific coast was without a representative on the board of general appraisers.

The place carries a salary of $7,500 per year, and is held during good behavior. It is one of the most desirable positions in the gift of the President.

Mr. de Vries felt especially honored by the fact that he made no application for the place, but was strongly recommended to the President by the Pacific coast delegation in congress and by prominent and influential Democrats and Republicans throughout the country.

FRANK R. DEVLIN.

Frank R. Devlin, of Vallejo, Solano county, Cal., was born in Windsor, Ontario, directly across the river from Detroit, Mich., but since he was three years of age his home has been in Vallejo.

Mr. Devlin was educated in the Vallejo public schools, graduating from the High School of that city at sixteen years of age, June 6th, 1884.

In 1885, in boyhood, he entered the naval service, enlisting on board the U. S. S. "Ranger," then on surveying duty, as writer.

The following three years were spent on board the "Ranger," surveying along the coast of Lower California. Captain Charles E. Clarke, of "Oregon" battleship fame, and Captain Francis E. Cook, the gallant commander of the "Brooklyn" in the battle of Santiago, were, at different periods during this time, commanding officers of the "Ranger."

Not content with his sea experience, Mr. Devlin, upon completion of his term of enlistment on the "Ranger," accepted an appointment as pay yeoman with Paymaster Chapman, U. S. N., on the U. S. S. "Dolphin," the "Pioneer of the White Navy," and the first of these ships to come to the Pacific coast. Leaving San Francisco in November, 1888, the "Dolphin" visited ports in Central and South America, Hawaiian Islands, Japan, China, Corea, East Indies, Egypt, Italy, France, Spain, England, and the Island of Madeira.

The experience and knowledge Mr. Devlin gained during his service in the navy and in his travels, have been of immeasurable value to him in his profession. The opportunity to study human nature, which one has while living on board of a ship with one or two hundred representatives of all degrees of society, the discipline, and the broadness one acquires through travel, conduce to success in life, and more particularly so in the legal profession.

During his service on board ship Mr. Devlin devoted himself to the study of law, but necessarily met many obstacles.

Shortly after his return home in 1891, he entered the law office of Hon. H. C. Gesford, at Napa, Cal., and in August, 1893, was admitted to practice by the Supreme Court.

He returned to Solano, his home county, and in August, 1894, was nominated by the Republican county convention, for district attorney and was elected for a period of four years. In September, 1898, he was re-nominated for the same position without opposition, and was re-elected by nearly treble his former majority over his same opponent.

His administration of the duties of his office has been signally successful, and has the general endorsement of his constituents.

Mr. Devlin is a self-made man in the truest sense, and has won a secure place among the leading young lawyers of central California.

D. H. DELONG.

The advantages that accrue to the youth whose parents are able and willing to furnish him with an excellent education to enable him to take a commanding position in organized society, have not been the lot of the subject of this sketch. While the more fortunate were gathering useful knowledge at the great institutions of learning, he was compelled by stern necessity to seek employment upon the farm and in the workshop. By industry and economy he was enabled to save sufficient money to pursue his studies with a view to practicing law, and he was admitted to the Supreme Court on the 8th day of September, 1898. His home and office are at Colusa, California. There are few men more worthy of confidence or more capable, and he has a good clientage.

DENIS DONOHOE, JR.

Mr. Donohoe was born in Buffalo, New York, September 19, 1861. His father, Denis Donohoe, was at that time Her British Majesty's consul at Buffalo. The elder Donohoe, a most worthy man, had a long consular career in the cities of the United States, his last post being at San Francisco, where we had the pleasure of his acquaintance. Taking the British consulate at San Francisco in January, 1887, his department embracing the Pacific Coast, he resigned in March, 1895, and re-

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tired to San Rafael, near by, where he had built him a home at the sunset of a long life. There he died on December 11, 1896, aged seventy-one years.

Denis Donohoe, Jr., was educated at Loyola College, Baltimore, Maryland; at Bishop's College, Lennoxville, Canada; the University of Bonn, Germany, and Columbia College Law School, New York City. Graduating from the last named in the class of 1882, he was admitted to the bar at Poughkeepsie, New York, May 18, 1883. He came to California in the winter of 1888-89, and has since been engaged in law practice at San Francisco, in partnership with Captain T. E. K. Cormac.

Mr. Donohoe is a married man, and resides at San Rafael. Like the senior member of his firm (which has been for some years Cormac, Donohoe & Baum) he has seen much of the world, and like him, he has the easy manner and engaging discourse of men who have traveled over historic lands with eyes wide open. He has always been a strong lover of external nature, and outdoor sports, and he still lets no summer slip by without going, with his dog and gun and fishing tackle, to the mountain streams and forests for a stay of weeks.

GEORGE E. CROTHERS.

George Edward Crothers is a native of Iowa, and was born May 27, 1870. At the age of thirteen he came to California with his parents, who have since lived at San Jose. At the latter place he attended the Horace Mann School, and subsequently the High School, from which he graduated in 1891. While at the High School he organized the High School senate, a literary society, which still flourishes at the school. He was also a member of the Gamma Eta Kaopa, a national High School fraternity, and in 1891 became chief grand officer of the order.

He entered Stanford University upon its opening, and was the temporary chairman and second president of the "Pioneer" class. While at Stanford he became a member of the Sigma Nu and Phi Delta Phi fraternities, the Alpha Literary Society and "Bench and Bar" Law Club.

In 1895 he graduated in history from Stanford University, after having fulfilled all the requirements for graduation in both the history and law departments. On May 27, 1896, he received the degree of Master of Arts in law. This was the only occasion upon which the degree has ever been granted. While working for his Master's degree he wrote a brief history of creditor's rights.

In the summer of 1896 he began the practice of law with Messrs. Pierson & Mitchell. The following year he became the junior member of the firm of Crothers & Crothers. He is one of the three attorneys of record for the executors of the Fair estate. In the recent trial of the Craven case he conducted the branch of the case relative to photography and handwriting, with what success the judgment of the court attests.

He was made the first president of the Stanford Alumni Club of San Francisco, and was president of the general Stanford University Alumni Association in 1899 and 1900. He is a member of the Golden Gate Commandery, Knights Templar, and a Shriner.

For nearly two years he was president of the People's Telephone Company of San Jose, which he placed upon a firm financial basis, but was obliged to resign, owing to a growing practice.

Jointly with T. G. Crothers, his brother, he is the author of the Stanford University Constitutional amendment, which is designed to serve as the organic law for Stanford University, and corrects many defects in the original enabling act and endowment grant. He directed the amendment movement from its inception.

JESSE R. DORSEY.

This gentleman was born at Argentville, Lincoln County, Missouri, in 1877. Like Hon. James G. Maguire, and others prominent at the California bar, he was a blacksmith's son. His ancestors came to America with Lord Baltimore, and settled in Maryland. His maternal grandfather was in the Union Army in the Civil War; his paternal grandfather was in the Confederate Army under General Price, who surrendered at Shreveport, La., at the close of the war.

Mr. Dorsey read law in the office of Albert Dickerman, Esq., at Watsonville, Cal., and afterwards attended the Northern Indiana Law School, at Valparaiso, Indiana. He was compelled to work to support himself while preparing for the profession. He was admitted to the bar in 1898. In May, 1899, he was appointed Deputy District Attorney of Kern County. He still holds the position, residing at Bakersfield.

O. V. EATON.

Mr. Eaton was born in Indiana, in 1870. He was graduated from Leland Stanford University in 1895, and Hastings College of the Law in 1897. He was admitted to the bar by the Supreme Court in 1897. He is now associated in practice with Galpin & Bolton, at 45-48 Crocker building, San Francisco.

C. A. ELLIOTT.

Christopher A. Elliott, junior member of the firm of Hinkson and Elliott, was born in the county of Ontario, near Toronto, Canada, on the 31st day of January, 1867. In May of the same year his father died, and two years later he came to California, accompanying his mother, who settled in Sacramento county, and there he grew to manhood. Mr. Elliott received his elementary education in the public schools of that county, and his collegiate training at the University of the Pacific at San Jose, California. After leaving the latter institution, he began the study of law with Young & Powers in San Francisco, and entered Hastings' Law College, where he pur-

sued his studies till his admission to the bar by the Supreme Court of the State on July 25th, 1892. In August of that year, Mr. Elliott began practice in the city of Sacramento, and four years later, on the retirement of A. C. Hinkson from the Superior bench of Sacramento county, he formed a partnership with the latter, which has existed ever since.

In politics, Mr. Elliott is a Republican, and at present he is one of the nine school directors entrusted with the management of the public schools of Sacramento city.

ISIDORE B. DOCKWEILER.

Isidore B. Dockweiler was born in Los Angeles, on December 28, 1867. He received his education at St. Vincent's College, in that city, from which he was graduated in 1887, with the degree of A. B. Two years later the same institution conferred upon him the degree of A. M. He spent about a year in surveying and on November 1, 1888, entered upon the study of the law in the offices of Anderson, Fitzgerald & Anderson, at Los Angeles. On October 14, 1889, he was admitted to practice by the Supreme Court of the State. He was soon after admitted to the bar of the Federal

courts. Immediately upon his admission he engaged in the practice of his profession. At present he is associated with Mr. Henry E. Carter, the firm being Dockweiler & Carter, with offices in the Douglas building, Los Angeles.

Mr. Dockweiler was president of the board of directors of the Los Angeles Public Library from 1897 to 1899. He is at the present time a trustee of his Alma Mater, St. Vincent's College, and ever since December, 1898, has been a trustee of the State Normal School at San Diego.

Mr. Dockweiler was married, on June 30, 1891, and is now the father of six interesting children. As a Native Son, he has taken great interest in the welfare of the order. In politics, Mr. Dockweiler is a Democrat, and frequently attends the local and State conventions of his party.

GUSTAVUS K. ESTES.

Mr. Estes was born in Vassalboro, Kennebec county, Maine, October 11, 1863. His father was killed at the battle of Hatcher's Run, (Virginia) October 27, 1864. His mother died when he was 17 years of age at Lawrence, Kansas, she having moved with him to that State some years previous to that date. At the age of 22 he was publisher of the *Pioneer Democrat* at Lakin, Kansas, and later went to Topeka, where he published the *Tribune*. He studied law while at Topeka, and in 1891 sold his interest in the paper and went to St. Louis and attended the St. Louis Law School for a year. He was admitted to the bar and shortly after came to the Pacific Coast, locating first at Port Angeles, Washington, and in 1893 moving to San Jose, California. In 1897 he purchased the *Register*, at Mountain View, Santa Clara county, and moved to that place where he has been since, practicing law as well as editing the paper. He was married to Miss M. Agnes Thompson in October, 1897.

Mr. Estes has traveled extensively through Canada, British Columbia, Mexico and thirty-one States and Territories of the Union.

JAMES D. FAIRCHILD.

James D. Fairchild was born in Yreka, Siskiyou County, California, February 14th, 1869. When but a small boy, his father moved to his stock ranch on the Klamath Lake, near the Lava Beds, where the son also resided until he was eighteen years of age, being sent away during the winters to various country schools.

His father, John A. Fairchild, was well known as a pioneer Indian fighter, having been the captain of the California Volunteers during the Modoc War. In fact, the Fairchild Ranch was the headquarters of the soldiers during that memorable campaign.

In 1887 young Fairchild entered St. Ignatius College, San Francisco, where he graduated after a four years' course, receiving the degree of B. S., and also distinguishing himself in mathematics, winning a gold medal. On returning from college he spent two years on the ranch, engaged in shipping horses and cattle. He then took up the study of law in the office of James F. Farrahar, at Yreka, where he was admitted to the bar in 1896, since which time he has been engaged in the practice of law in Yreka.

JOHN D. FREDERICKS.

Mr. Fredericks was born in Pennsylvania, September 10, 1869. He was graduated from Washington and Jefferson College in the class of 1890, with the degree of Bachelor of Arts. He came to California in 1890, locating at Los Angeles in that year, and took up the practice of law in 1893. In the War with Spain, 1898,

Thomas G. Crothers

he enlisted in the Seventh California Infantry, United States Volunteers, and served as adjutant of his regiment. In 1899 he was appointed deputy district attorney of Los Angeles county, under Hon. James C. Rives, and is now filling that position.

THOMAS G. CROTHERS.

Thomas Graham Crothers, executor and trustee of the Fair estate, has met with signal success since his entrance to practice in San Francisco in the year 1894. He is the son of John and Margaret Jane Crothers, both of whom are of Scotch-Irish descent. He was born in 1868, and spent his childhood days in Manchester, Iowa. In 1879 he went with his parents to Ida Grove, Iowa, near which his parents had purchased large tracts of prairie, for grazing purposes, in the early seventies, but which had now become much too valuable for such use. Here he had the inestimable advantage of witnessing the almost instantaneous conversion of the sparsely populated prairie into one of the most populous districts in the country.

After remaining four years at Ida Grove, his parents, desirous of affording their numerous family the advantages of a university education, determined that the educational facilities of the small colleges of Iowa were inadequate, and accordingly came to California. Young Mr. Crothers attended the public schools of San Jose, and the University of the Pacific, when the latter was of equal rank with the State University. While not making any special effort for mere precedence, he invariably received the highest grade in his classes throughout his preparatory courses.

In 1892 he graduated in the historical department of Stanford University as a member of the first graduating class. While at Stanford he was an active member of the literary clubs and of the Sigma Nu fraternity.

He graduated from the law department of the University of Michigan, having taken much of the graduate work in addition to the prescribed undergraduate course of instruction.

Soon after graduation he began the practice of the law with the firm of Messrs. Pierson & Mitchell. Since the death of Senator James G. Fair he has been identified with the Fair estate, first as special administrator, and subsequently as executor and trustee. Under the terms of the will, he will hold the Fair estate in trust, together with Messrs. Angus and Goodfellow, during the lives of the three Fair children.

In 1897 he formed a partnership with his brother, George E. Crothers, of which he is the senior member. Owing, in part, to his wide experience in connection with the Fair estate litigation, he has been peculiarly successful in building up a very lucrative practice.

On August 30, 1900, he married Miss Gertrude Benjamin, the daughter of a well-known Oregon pioneer.

Mr. Crothers is an enthusiastic Mason, being a member of Golden Gate Commandery Knights Templar, of California Lodge and Chapter.

GEORGE D. GEAR.

George D. Gear was born in Quincy, Plumas county, California, March 21, 1868. He is a son of H. L. Gear and a grandson of the late Peter Van Clief, both of whom are sketched in this History. He received his education in the public schools and in Denison University at Granville, Ohio, and at California College. He studied law in his father's office, and was admitted by the Supreme Court at Sacramento in November, 1890. He entered the practice of the law in partnership with his father, and continued in such partnership until August, 1895. He proved himself a lawyer of independent judgment, and a successful practitioner. In 1897 he went to Honolulu to reside, and has since been in the practice of law in Hawaii. He has become a prominent member of the Hawaiian bar. Business there acquired has thrice taken him to Washington, D. C., and he was admitted to practice in the Supreme Court of the United States in October, 1899. He has also been admitted to the United States Circuit Court and the Circuit Court of Appeals, which hold their sessions at San Francisco.

WILLIAM A. FISH.

William Andrew Fish was born in Tehama, Tehama county, California, June 14, 1863. His father, Judge Lafayette Fish, was one of the early pioneers, having crossed the plains in 1853, and located at French Gulch, where he engaged in mining. In 1856 Judge Fish returned to Davenport, Iowa, where he was married the following year to Miss Jennie Carter, and in 1861 he again recrossed the plains and settled near the town of Tehama. He engaged in farming and stock-raising. In 1870 he moved to what is now the town of Corning, where he and Mrs. Fish still reside. Judge Fish was the first justice of the peace of Corning township, which office he has held continuously for twenty-four years.

William Andrew Fish began life as a farmer boy. At the age of sixteen years he entered the service of the firm of Simpson & Aitken, at Corning, and rose rapidly to the position of head salesman and manager. After remaining with that firm for six years, he resigned and took a position with the large mercantile house of the Cone & Kimball Company at Red Bluff. He remained continuously with them until in October, 1894, when he was elected county clerk of Tehama county. He was re-elected in 1898, and is now serving his second term in the combined offices of county clerk, auditor and recorder.

Mr. Fish had long desired to take up the profession of the law, and in 1893 he commenced his reading with Blackstone. In September, 1898, he was admitted to practice at the bar of the Supreme Court.

He has a splendid law library, and as soon

as his term of office expires, he will enter upon the practice of law at Red Bluff, where he is assured a good clientage from the beginning.

On October 21, 1884, Mr. Fish was married to Miss Mary Custer, at Napa, California, a daughter of John Custer, one of the early pioneers of Napa county, a veteran of the Mexican War, and a corporal under John C. Fremont; and who assisted in the building of Fremont's old fort at Monterey.

Mr. Fish is at present captain-general of Red Bluff commandery, No. 17, Knights Templar; colonel of the second regiment, uniform

rank, Knights of Pythias of California; a member of Sacramento lodge, B. P. O. E., and prominent also in the Order of the Maccabees.

FRANK P. FLINT.

The present United States attorney for the southern district of California, Frank Putnam Flint, was born at North Reading, Massachusetts, July 15, 1862. At the age of seven he came to California with his parents, who located at San Francisco. He was educated in the public schools of that city. He was admitted to the bar of the State Supreme Court, after full preparation and due examination, and removed to Los Angeles in the year 1898. On October 10, 1892, he became assistant United States attorney under Hon. M. T. Allen, now on the bench of the Superior Court. He resigned on the 4th of March, 1893, and formed a partnership with Judge Allen. The firm of Allen & Flint continued until Judge Allen went on the bench, in January, 1895.

Mr. Flint entered upon his present position of United States attorney, by appointment of President McKinley, a month after the latter's first inauguration—April 8, 1897. He is prominent in social as well as in political circles. He has been a member of the Chamber of Commerce since 1897.

Mr. Flint stands high at the bar, and is administering his important office to general satisfaction.

He was married to Miss Katharine J. Bloss, at Los Angeles, on the 25th day of February, 1890, and has two children.

ROBERT R. FOWLER.

Robert R. Fowler was born at Pawnee City, Pawnee county, State of Nebraska, on the 15th day of August, 1870, and removed with

his parents to the State of California in the year 1874, being at the time of his arrival in this State less than four years of age. He acquired a good common school education in the public schools. Afterwards, in his very early manhood he, for a time, entered upon

James A. Devolo

newspaper work, being connected with the *Selma Irrigator* and the *Madera Mercury*, and ever since, to the present time, has contributed to various newspapers in this State. Some of his articles have attracted widespread attention. Mr. Fowler is possessed of more than ordinary literary ability. He is an entertaining writer, and has a discriminating taste in literary matters. After three years' study and work in a lawyer's office he was admitted to practice before the Supreme Court of the State of California, in 1895, and immediately thereafter commenced the practice of law, first opening an office in Madera, California. In 1897 Mr. Fowler was nominated for district attorney of Madera county by the Republican party, and was elected by a handsome majority. He is at this time, October, 1900, the incumbent of the office of district attorney of Madera county, which position he has so far filled with credit to himself and satisfaction to his constituents. Mr. Fowler is a young man of pleasing address and one of the most popular and promising young men in Madera county. His friends predict for him a brilliant career.

JAMES A. DEVOTO.

James Augustus Devoto was born in the great city where he has been in full practice for some years. Just a decade has elapsed since his admission to the bar. Very soon after he began practice he formed a partnership with that excellent lawyer, and ex-District Judge, E. D. Wheeler, and this lasted until Judge Wheeler's death, in January, 1895. His present association is with W. A. Richardson and P. V. Long (Devoto, Richardson & Long.) The extensive offices of this firm in Montgomery block, San Francisco, include those which Joseph P. Hoge occupied over thirty years continuously.

Mr. Devoto was born on the 29th of July, 1869, the son of a merchant in good circumstances. He went to the public schools of San Francisco, taking the full course of study in the boys' high school, and thereafter was duly graduated from Hastings' College of the Law. He was admitted to the bar by the Supreme Court on May 5, 1890, three months before he became of age. He then went to Europe, and, after spending six months in visiting the principal cities and other historic places, he devoted a year to classical study in the University of Genoa, Italy. Returning home, he entered on the practice as already shown.

Mr. Devoto is of large and strong build physically, and his mind is well stored with varied knowledge. He is very ambitious as a lawyer, and very capable. His clients are numerous, and he is in the full tide of prosperity in a period when this statement applies to comparatively few. In politics he is a Democrat. He has never sought office. He has been noble grand arch in the Order of Druids; is a thirty-second degree Mason, and, of course, is an active member of the N. S. G. W.

W. M. GARDNER.

Wilber M. Gardner was born March 22, 1861, near Elgin, Illinois. He was educated in the public schools. At the age of fourteen he left home, to shift for himself, and enlisted as clerk in a general merchandise store. On account of serious rheumatic troubles, he determined to come to California, arriving in San Francisco, April 18, 1882. The first year was spent in traveling over the State. In March, 1883, he located at Santa Cruz, where he has since lived, excepting two years when he worked for the San Pedro Lumber Company, at San Pedro, California. During his illness with rheumatism he studied shorthand and typewriting, and followed that profession for a number of years, a portion of the time as shorthand instructor in Chestnutwood's Business College.

At the election of 1890 Mr. Gardner was successful as a candidate for Justice of the Peace in Santa Cruz, which office he continued to hold for eight years, during which period he improved his time by studying law, taking both the California course and a course from the Western Correspondence School of Law of Chicago. He was admitted to practice by the Supreme Court of this State on December 30, 1898, and on January 1, 1899, formed a partnership with Ed Martin, since which time the firm of Martin & Gardner has been practicing law at 4 Cooper street, Santa Cruz.

WILLIAM A. GETT.

It would be difficult to point to a better instance of what may be accomplished by a man of pluck, perseverance and principle, than is presented in the life-history of this gentleman. He has risen to prominent rank in a profession where hard, honest work tells perhaps more surely than almost any other line of life; that, too, from the narrowest circumstances of his early days, and against serious and discouraging obstacles. He is a native of Sacramento, where he has lived all his life. A genial, good-hearted, honorable, hard-working and talented man, he deserves every whit of his success. The date of his birth was July 17, 1863. His father, Captain W. A. Gett, was a well-known pioneer resident of Sacramento, settling there in the golden days of '49, and during his life was a man who held a good position in the estimation of all.

The subject of this article atttended different private and public schools in Sacramento. For a time he devoted his attention to engineering and surveying, but being naturally of a busy and aspiring turn of mind, soon abandoned those pursuits for the study of the law. He entered the law office of Jones & Martin, and, two weeks after attaining his majority, passed a brilliant examination before the Supreme Court of California, and was admitted to practice. By his quickness of judgment, legal skill and careful study of his cases, he soon won reputation and prosperity in his profession. He believes firmly in the dignity of the

lawyer's calling. He owes his success largely to the effective course pursued by him in singling out the most salient point of his case, letting the rest go, and reserving all his strength for that point.

Mr. Gett is a Democrat, of unswerving views. He has been tendered the nomination for many offices of responsibility and honor, but has always declined them, aiming rather to place himself at the very lead in his profession. But offices of trust and responsibility always come to those who are worthy of them, whether they seek them or not. Mr. Gett has, nevertheless, been of great service to his party as a speaker and worker during several campaigns.

As is natural with a gentleman of such an active disposition, he is a member of many fraternal orders. He is a past president of Sacramento Parlor No. 3, N. S. G. W., and has been a delegate at several sessions of the Grand Parlors, on which occasions he has always been one of the most practical workers. He is a member of El Dorado Lodge, I. O. O. F., and is past chieftain of the Sacramento Caledonian Association. In Masonic circles he is a member of Tehama Lodge No. 3, Sacramento Commandery, K. T., and Islam Temple, Nobles of the Mystic Shrine. On September 21, 1892, he was united in marriage to Miss Ema Sweeney, and his home is as happy as his professional life has been successful. His genial personality has drawn around him a large circle of warm friends, and he is one of the most popular members of the Sacramento bar, as is evidenced by what is spoken of him by his clients and the judiciary.

He has done his duty to the State as a soldier, having served ten years in the N. G. C., and being placed on the retired list, with the rank of major.

We knew Mr. Gett in boyhood. In this notice of him we use the information given in the "History of Sacramento County."

BEN F. GEIS.

Ben F. Geis was born in Indiana County, Pennsylvania, on the 27th day of April, 1862. He was educated at the Iron City, and St. Vincent, Colleges, in his native State. After finishing a commercial course he followed the occupation of bookkeeper until 1879, when he came to the Pacific Coast. After traveling over Nevada, Washington and Oregon, he finally located in Sacramento, where he subsequently took up the study of law, and where, in 1885, he was admitted to the bar. He has been City Attorney for the town of Willows since 1886, except during his incumbency as District Attorney. He is a pioneer member of the Glenn County bar, having located at Willows prior to the creation of the county. He was elected the first District Attorney of the County, and has held that position twice, his last term having expired on the 1st of January, 1899. His parents are native-born Pennsylvanians. His grandparents on his father's side were Germans, while those on his mother's side were of French extraction, his grandfather on the maternal side having been an army officer under Napoleon, in the battle of Waterloo. His father, Conrad Geis, served with distinction in the

Civil War, but lost his life just at the close of the war, while yet in the service. Mr. Geis is now a member of the firm of Geis & Albery, at Willows.

HANSFORD B. GRIFFITH.

Mr. Griffith is a native of Virginia and was born in 1868. He spent his boyhood days on an old plantation. He came with his parents to California at the age of fourteen years, and settled in Fresno, where he commenced business on his own responsibility. After four years of active life and at the age of eighteen, he returned to his native State and entered Emery and Henry College in the sophomore class, and was graduated with honors in June, 1890. In the fall of 1890 he entered the law department of the University of Virginia, but was called home on account of the death of his brother, E. J. Griffith. After an experience of two years in the wholesale carriage business in Fresno and at the age of twenty-four years, he located in San Jose and took up again the study of law. In January, 1895, he was admitted to practice law in the Supreme Court of the State, and entered an office in San Jose. In February, 1895, he was married to Miss Luna Compton.

Mr. Griffith entered into the law practice at the age of twenty-six with a wide business experience, and met with success from the very beginning. In 1897 he removed from San Jose and located his residence in Berkeley, Alameda county, California, and opened an office in the *Examiner* building, San Francisco, at which place he has been located ever since. He has participated as attorney and counsellor in some very important cases.

Mr. Griffith is an enterprising and far-seeing man. In 1898 he conceived the idea that there

has a great future in the production of California oil and petroleum. He is one of the organizers and a director in the famous Independence Oil Company, of Coalinga, and has made by reason of his splendid business capacity a large fortune within the past two years, out of the successful promotion of various oil enterprises.

Mr. Griffith has been tendered nominations for positions of prominence politically, but has refrained from entering into active politics. He rather prefers business activity to political position. He is a dyed-in-the-wool Democrat of the old school, earnest and conscientious, believing in the policy of his party as laid down by the Kansas City convention in 1900. He is opposed to the holding of the Philippines by force and the acquisition of territory by the bayonet. Mr. Griffith is now in his thirty-second year, possessed of a bright mind and keen business sagacity, which bespeaks for him an enviable career.

HERBERT J. GOUDGE.

Mr. Goudge was born in London, England, April 26, 1863. He is descended from a Huguenot family, which emigrated from France to England upon the revocation of the Edict of Nantes, some of whom subsequently settled in the state of New York. Mr. Goudge was educated at the City of London School and Kings College, London. He came to California in ing to Los Angeles in 1895, he in that year organized, and has ever since been a director of, a successful building and loan association. Since the passage of the bankruptcy act he has devoted considerable attention to bankruptcy law. He is the attorney for one of the largest eastern surety companies, and in January, 1901, he was appointed first assistant city attorney of the city of Los Angeles.

GUSTAV GUTSCH.

Gustav Gutsch, born in 1861, at Tribsees, in the kingdom of Prussia, comes from a family of military traditions. His grandfather, Carl Gutsch, had enlisted in the Prussian army corps of General York, which, by the orders of the first Napoleon, was obliged to participate in the latter's memorable campaign against Russia. As every one knows, the fate of that war was determined by the burning of Moscow, and the retreat, resulting in almost the annihilation of the army led by Napoleon. General York then, without even consulting his king (who, however, subsequently ratified the act), entered into a treaty with the Russian government, whereby the latter agreed to stand by the Prussians in their impending struggle for independence. During the following year, York's corps was assigned to the army of Blucher, and bore the brunt of most of the fierce battles culminating in the decisive victory of the allied Prussian, Austrian and Russian armies at Leipsic, after a desperate struggle lasting for four days. It was during the hottest of that fight, on October 18th, 1813, that Carl Gutsch, advancing upon one of the captains of Napoleon's Imperial Guard, who was defending himself with his sabre, threw his powerful arms around the captain, disarmed him and made him a prisoner. He took the sabre, and that trophy, beautifully engraved, is still kept by the family as a souvenir of one of the most important events in European history.

The grandfather's warlike spirit was transmitted to the son, Gustav Gutsch, Sr. He in 1848, while a student of law at the University of Berlin, and owing no allegiance whatever to the Duke of Augustenburg, then at war with the king of Denmark, enlisted in the cavalry of the duke, and took part in a number of engagements no less exciting, though of less historical consequence, than the battle of Leipsic. Having gratified his desire for military achievements, G. Gutsch, Sr., went back to his legal studies, and, after completing them, devoted himself to the service of his government, advancing in rank by successive appointments, until he became the head of the department of internal revenue and customs for the province (co-extensive with the former kingdom) of Hanover. In 1893, acting chiefly upon the advice of his son, who visited his parents about that time, he asked and obtained leave to retire from the government service on his pension provided by law; and in the following year, he concluded, after consulting with his wife, Mrs. Minna Gutsch, to make the State of California his abode. Both Mr. and Mrs. Gutsch, Sr., now live happily and comfortably in their own home on Clinton avenue in the beautiful city of Alameda, amidst fragrant roses and trees, with which their garden abounds, and enjoy the genial climate of California as well as the outlook, from their windows, upon the vast expanse of the bay of San Francisco, with its mountain surroundings, and ever varying formations of clouds.

Owing to the frequent changes of residence incident to the governmental career of his father, Gustav Gutsch, Jr., spent the years of his early youth in various parts of the fatherland. From 1870 to 1875 he frequented the "gymnasium" at Cassel, Hesse-Nassau. This was the school where, in 1874, Prince Wilhelm of Prussia, now Emperor Wilhelm II, was enrolled as a pupil, and where he subsequently, after passing examinations, took his diploma admitting him to the university. After attending two other "gymnasia," at Magdeburg, Prussia, and Munich, Bavaria, Gutsch, Jr., at the last-named city, was granted his diploma, and shortly afterwards went to Rome, enrolling himself as a law student in the university built by the famous Michael Angelo. The impressions which the historical reminiscences of the Eternal City, and of Naples and other places which he visited during vacation, together with the manners and thoughts of a people wholly foreign to him, made on his youthful and susceptible mind, have largely shaped his subsequent course. Being fond of the Romanic tongues, and with a thorough training in Latin, received at the German

schools, he quickly acquired a fluent use of the Italian language. By means of it, he managed to work himself into an understanding of the spirit and sentiments of his Italian fellow-students, instead of remaining a stranger to them, as usually happens to visitors of foreign countries in their relations to the natives; and, owing, also, to his intercourse with Englishmen and Americans, large numbers of whom spend the winter in Rome every year, he became quite cosmopolitan in his views. This change was approved by Ferdinand Gregorovius, one of the most illustrious modern historians of Germany, and an intimate friend of the Gutsch family, who then lived in Rome, and who frequently accorded the benefit of his interesting company to the young student. The latter, by degrees, realized the good traits existing in men different from him in nationality, views and traditions, and, before the close of his year's course at Rome, banished from his mind the narrowness of ideas which is not patriotism, though it frequently usurps the name of patriotism, but is merely an inability to look upon the achievements and advantages of other nations from an impartial standpoint. The next aim of our friend was the University of Geneva in Switzerland. There he attended law courses and was confirmed in his new views of life through associations with other students, assembled at that famous center of learning and humanitarian thoughts. At the end of the "semester" he returned to Germany and was successively matriculated as a student of law at the universities of Munich and Berlin. During the same period he served his year (as a "volunteer") in the German army. In 1883 he gained his admission to practice, after a rigid examination by the highest court of Prussia, and about three weeks later, having proved his qualification by a still severer test, to which he was put by the legal faculty of the University of Leipsic, he was by that body promoted to the highest academical degree within its gift, that of "Doctor Juris Utriusque." The Prussian government then appointed him "referendary," that is, a practitioner in the courts of justice, and sent him to Christburg, a small town in the eastern part of Prussia, where for some months he had to do duty, as is customary, in order to familiarize himself with the requirements of actual practice. But he had long previously made up his mind not to pursue the slow and monotonous career of an employee of the government. His liberal ideas and the effects of his studies, associations and experiences abroad, caused him to look for a wider and more independent field of activity. He had therefore decided to go to the United States; and after resigning from his position as referendary and obtaining leave from his government to emigrate, he came to San Francisco in the spring of 1884. Here he devoted himself at first to the study of the English language, which he has since mastered completely, both in speech and in writing, and simultaneously, by constant reading and comparison with the Roman law, acquired familiarity with the principles of the common law, so that in January, 1887, after an examination directed by Justice E. W. McKinstry, he was admitted to the bar by the Supreme Court of the State. For about four years thereafter he practiced as a clerk in various law offices, especially in that of Mr. Henry E. Highton, with whom he stayed for almost three years. In 1891 Mr. William Loewy, attorney for the German consulate at San Francisco, offered him a partnership, which he accepted. Thus the law firm of Loewy & Gutsch was established. Its business has been large and successful. A considerable portion of it has come to the firm through various consulates of San Francisco. Messrs. Loewy and Gutsch represent many foreign claimants of properties situated in California, and in the neighboring States, and a number of interesting questions of international law have arisen in the course of their practice.

The subject of extradition was fully and ably treated by them in the case of Max Hohl, a forger, who had fled from Hamburg and deemed himself safe from capture in this State, but was at last, after a determined contest in the United States Circuit Court, surrendered and returned to the place of his crime. Some two years ago the firm became the representative of the so-called "German heirs" of Charles Lux, deceased, whose estate, valued at several million dollars, was included in the assets of "Miller & Lux," the largest land and cattle-owners on the Pacific coast. Loewy & Gutsch, concluding that the terms of the incorporation of "Miller & Lux," effected shortly prior to their employment, were injurious to the interests of their clients, immediately commenced a suit in equity in the Circuit Court, asking that the incorporation be declared illegal and void, and demanding an accounting from the surviving partner. After about a year of litigation, a compromise was reached to the satisfaction of all the parties concerned. The German heirs, by the arrangement, were freed from an indebtedness which had threatened to destroy their interests, and in lieu of the legacies given to them by the will of Charles Lux, accepted a corresponding number of shares of the corporate stock. Loewy & Gutsch now represent them in their new capacity as stockholders of "Miller & Lux."

In the fall of 1808, Mr. Gutsch, in view of his knowledge of the civil law and of the degree conferred on him by the University of Leipsic, was appointed "honorary lecturer in jurisprudence" at the State University. The work done by him in that institution is described in another part of this book. (See "University of California.")

WALTER F. HAAS.

Mr. Haas, who is referred to in the sketch of the veteran S. O. Houghton, was born in Missouri in 1869. He came to California, and settled at Los Angeles in 1884. He was graduated from the High School of that city in 1889. He prepared for the bar in Colonel

Houghton's office, and was admitted to the bar by the Supreme Court in 1891. He was elected city attorney of Los Angeles in the fall of 1898, and served the two years' term ending in the first week of January, 1901. Colonel Houghton efficiently assisted him in the administration of that office.

Mr. Haas is a lawyer of good ability, and a young man of much promise. He is unmarried. Since the expiration of his term of office as city attorney he has resumed active practice, being associated with Frank Garrett, under the firm name of Haas & Garrett.

ROBERT LEE HARGROVE.

Mr. Hargrove was born near Atchison, Kan., March 29, 1868. His father, L. B. Hargrove, who was sheriff of the City and County of Atchison in 1883, 1884 and 1885, and one of the largest live stock and grain dealers in the northwest, was born in Lafayette county, Missouri, in 1835, and settled near the present site of Atchison in 1852. He came to California, overland, in 1857, and returned to Atchison by Panama in 1858. At Atchison he married in 1859, Sarah E. Duncan, a native of Kentucky. Robert L.'s grandfather, John Hargrove, was born near Nashville, Tenn., in 1790, and fought under General Jackson at the battle of New Orleans, in 1812. Robert L.'s father served in the Union army and was wounded at the battle of the Little Blue, below Kansas City.

Robert L. received his early education in the public schools in Atchison county. In 1884 he entered the United Presbyterian Academy at Hiawatha, Kansas, where he received a commercial training. Leaving the Academy in 1886, he clerked in a store for a time, and then opened up a store on his own account. This he sold out and emigrated to Wichita county, Kansas, and taught school in that county during the years 1887, 1888 and 1889. In 1887 while teaching school he took up the study of law, studying the Pentateuch, Green's English History, Shakespeare, and Chitty's Blackstone under the tutorship of Norris Sprigg, Esq. After mastering those studies he took up the regular study of law in the offices of Coan & Hall, county and deputy county attorneys, respectively. Saturdays and vacations were spent in their offices. He also followed his studies in the evenings after school hours. He was admitted to practice law in all the courts of the State of Kansas on November 23rd, 1889. Having finished his last term of school in March, 1890, he came to California in April, 1890, and entered the law offices of Van Meter & Warlow, in Fresno. There he familiarized himself with the California codes. He finally located in Madera, California, May 6th, 1890, where he has continuously practiced law ever since. He was admitted to practice in the Supreme Court of this State on August 21, 1894, and was admitted to practice in the United States Circuit Court and the United States Circuit Court of Appeals at San Francisco, on August 23rd, 1804.

By energy, industry and studious habits, Mr. Hargrove has built up a large and extensive practice and has been remarkably successful in his chosen profession. His temperate habits, persistency and dignity of character, as well as a thorough training and large experience in the commercial world, have placed him in the position of one of the leading attorneys and counsellors of the State. From 1891 to 1804 he was attorney and one of the directors of the Bank of Madera. The Bank of Madera being an adjunct of the Pacific Bank of San Francisco, was compelled to go into liquidation. In December, 1894, he was appointed president and attorney for the Bank of Madera in liquidation at the request of the bank commissioners of the State of California, and has occupied that position ever since. During this period the Bank of Madera paid its depositors in full, dollar for dollar, amounting to over $80,000. Mr. Hargrove is at the present time attorney for the Raymond Granite Company, which operates the largest granite quarries and granite works in the State. He is also attorney for the Madera Canal and Irrigation Company, the only irrigation system in the county of Madera, and is also attorney for the Italian Swiss Colony and Agricultural Company, which operates the largest and most extensive wineries in the State. He also holds many other responsible positions. He is a member in good standing of Court Madera, No. 749, I. O. F.; of Madera Lodge No. 327, I. O. O. F.; Madera Lodge, No. 280, F. and A. M.; Trigo Chapter, No. 69, R. A. M.; Madera Chapter, No. 92, O. E. S.; Madera Rebekah Lodge No. 159, I. O. O. F., and Madera Camp, No. 161, W. of W. He is at the present time Master of Madera Lodge, F. and A. M.; trustee and chaplain of Madera Lodge I. O. O. F.; secretary and past patron of Madera Chapter, O. E. S.; and financial secretary of Court Madera, I. O. F., which position he has held for the last nine years. He is a member of Yerba Buena Lodge of Perfection No. 1, A. & A Scottish Rite Masons, of the Orient of San Francisco.

On November 27, 1891, Mr. Hargrove married Coral Wreath Garland, a native of Rye Beach, N. H. They have one chld, Robert Lee Hargrove, Jr., born September 25, 1894. Mrs. Hargrove is the daughter of C. W. Garland, who was a captain in the Union army, stationed at the Presidio, San Francisco, during the Civil War, and who in the early seventies was assistant United States district attorney for the Western District of Texas, under his brother, C. T. Garland, who was United States district attorney. C. T. Garland from 1869 to 1873, also was judge of the District Court for the Eighth and Fourteenth judicial districts of Texas, and while judge, established a rule in his court that in all cases where negroes were prosecuted for criminal offenses, the jury should be composed of both white and black men. So he became widely known as the author of the "Mixed Jury System." Judge Garland's rule was attacked by the legal fraternity of Texas and the matter was carried to the Supreme Court of the

United States in the celebrated "Francois case." The Supreme Court upheld Judge Garland's rule. C. W. and C. T. Garland are lineal descendants of Samuel Adams, and their great-grandfather, Colonel Benj. Garland, was a colonel in the Revolutionary Army and was in the battle of Bunker Hill.

FRANCIS J. H. HAMBLY.

Francis James Hele Hamply was born in the city of Belleville, Canada, April 21, 1874. He is a son of the late James Hele Hambly, prominent in the politics of that country for many years, and a grandson of David Roblin, M. P. P. Napanee, known throughout Canada as one of her ablest men.

Mr. Hambly read law under Senator H. V. Morehouse, at San Jose, and was admitted to practice by the Supreme Court of California in April, 1895. The present partnership of Morehouse & Hambly at the Garden City was formed January 1, 1897.

PAUL C. HARLAN.

Paul C. Harlan was born in Bellefontaine, Ohio, on September 11, 1866, and came to California, with his parents, in 1875. His youth was varied by many changes of residence, interspersed with visits to the home of his childhood, in Ohio, after which he entered upon a college course at Oakland, in this State, with the determination to make the law his life's occupation.

At the age of twenty, he began the study of law in earnest, and left for Wichita, Kansas, then the center of a monster real estate boom, which lured speculators and adventurous spirits from all over the Union. There Mr. Harlan entered the office of D. W. Welty, author of the work on "Assessments," and at that time chief counsel of the Wichita Savings Bank. He studied in Mr. Welty's office for a little over a year, occupying the position of head clerk incidentally, and in October, 1888, was admitted to practice in the Supreme Court of Kansas. A month later, he was granted a certificate by the California Supreme Court, on motion. Then followed his novitiate in the practice of law. He settled in Dixon, Solano County. Three years later he removed to San Francisco, where he remained two years. Then his desire for travel got the better of him, and he spent two years in the east, engaged in journalistic work.

In California he had filled positions on the San Francisco *Chronicle* and *Call*, and "worked up" considerable of the news which sprang out of the People's Home Savings Bank muddle, and the criminal libel case instituted by Dr. Mark Levingston against the

Civic Federation, when that body opposed the appointment by Governor Budd, of Dr. Levingston as health officer. Five members of the Federation were arrested, but escaped conviction by a technical point. While on the *Chronicle*, Mr. Harlan had full charge for a time, of the railroad news. He "dropped off" at Los Angeles, on his way East, and reported for the *Times*, the criminal assault case against Clifton E. Mayne, the heresy case of the Rev. Bert Howard before the Presbytery, and the prosecution of Anita Willard, the discoverer of "Persian Bloom" and "Ocean Spray." The charge against Anita was that of swindling ambitious and not over-handsome ladies by the use of the mails. Mr. Harlan also kept his eye on the Los Angeles oil fields, and the Standard Oil Company, incidentally, for the *Times*.

In Chicago, that hot-bed of anarchy and camp of labor unions, he "did" labor news for the *Record*. His work for the United Press and Associated Press in New York City included the trial of electrical superintendent Smith, of the fire department, on a charge of defrauding the city of $250,000, by "standing in" with contractors. This trial lasted eight months, and resulted in the acquittal of Smith. The stand had been taken

by Mr. Harlan, early in the trial, that the whole thing was spite-work persecution, backed only by unsuccessful bidders on contracts; and this position was justified by the outcome. From the Central Park "Zoo" he sent stories by 'phone to the press associations, which amused thousands of the admirers of animals; and Bellevue Hospital, the largest charity hospital in the United States, was his field of labor in the summer of 1896, when people fell dead in the streets, and others died while asleep and tumbled dizzily from windows and down stairways to death, overcome by the heat.

Mr. Harlan's eastern experiences included, also, a delicate mission to Liverpool, on the White Star Liner "Georgic," then the second largest freight vessel in the world. Her cargo included 780 horses, 1500 cattle and 820 sheep, and all this stock was insured. It was the duty of the ship company to care for and feed the stock, under the direction of foremen, who represented the individual owners of the stock. Mr. Harlan was requested to investigate, for a big insurance concern, the manner in which the stock was cared for, and the effect of allowing stock on a vessel to be heavily insured. The details of this investigation are, naturally, a closed book to the public, but it resulted in several radical changes in the conditions imposed preliminary to the placing of risks on live stock to

In the fall of 1897, Mr. Harlan was in Los Angeles, and after a short tour of duty on the *Herald*, he went to San Francisco, and, when the War with Spain broke out, he threw the comforts of civil life to the winds and sailed away with the First California Regiment to fight in the far-away and then-mysterious Philippine Islands, for his country. When his regiment returned and was mustered out, he turned to the quieter duties of a civilian, with the same promptness which characterized his venture upon the soldier's life.

We have tried to write of his interesting life as a journalist in a sort of reporter's style. He is now devoting his fine natural gifts and gathered learning to legal business, and is rapidly achieving success at the bar. His office is in Fairfield, Solano county.

L. G. HARRIER.

L. G. Harrier has spent his life in California, his native state. He is a graduate of the Vallejo High School and of the State University. At Berkeley he was a member of Beta Theta Pi, a college fraternity, which has on its lists a host of the leading lawyers of the State.

Mr. Harrier took up school teaching after his graduation, and followed it by a period of journalsim. He was editor of the Vallejo *Chronicle*. In time he forsook that pursuit for the law. He has done something in politics, having been chairman of the Solano county Republican central committee several terms, and at present he is one of the local leaders of his party.

While practicing law, Mr. Harrier was elected superintendent of schools of Vallejo twice, and was a very successful manager of the department.

For four years he was assistant district attorney of Solano county and figured in many important criminal trials. For ten years he has been city attorney of Vallejo, from which office he retired in 1900, owing to the demands of his private business. He is now the attorney for the largest corporations in the city and for the public administrator of Solano county.

Mr. Harrier married Miss Jessica V. Penny of Ann Arbor, Michigan, a graduate of

the University of Michigan, and built himself a home at Vallejo, where he resides with his family. He is interested in many outside business propositions and has been uniformly fortunate in his ventures. The practical knowledge thus acquired has made him a safe, conservative and reliable legal adviser, and has built up for him one of the largest law practices in Solano county.

In 1896 he was admitted to practice before the Supreme Court of the United States, having been sent to Washington that year by the Board of Trade of the city of Vallejo.

THOMAS E. HAVEN.

Thos. E. Haven, son of James M. Haven, was born at Downieville, Cal., on April 1, 1865. He was educated at Williams College, Massachusetts, and at Hastings College of the Law. He located at San Francisco in June, 1890, when he was admitted to the bar, and has since been associated in the practice with his father. The firm has a steady and valuable business, with fine offices in the Claus Spreckels building.

E. S. HELLER.

E. S. Heller was born in San Francisco, January 2, 1865, and was educated at the public schools of that city, the State University, and

Hastings College of the Law. He was admitted to the bar on July 1, 1889; and has since been practicing in San Francisco.

JOHN H. HENDERSON.

John Hayes Henderson was born at Panama in 1861, his father being the British consul at that place. His parents were Scotch, and his father, who is still living, enjoys the distinction of being the oldest British consul alive. His period of service covered nearly fifty years.

Mr. Henderson's education was varied, he having attended schools in Peru, England, France and America. In 1878 he passed the entrance examination for Harvard College, with a general average of 85 per cent. He did not, however, remain at the university, but left soon after for England and France, where he studied French under M. Leport (who was Victor Hugo's most intimate friend and suffered exile with him at Jersey), and

classics under an Oxford tutor. He then entered the foreign office at London as a preliminary to entering the consular service. Returning to Boston he was appointed British vice-consul at that port, and at the end of 1880 came to California. He attended the Hastings College of the Law at San Francisco, and after reading in the office of Jarboe, Harrison & Goodfellow, was admitted to practice in January, 1885. Since then he has practiced at San Francisco and has been engaged in some important cases, among others the estates of Thos. H. Blythe, Henry Martin and Angelina R. Scott.

L. R. HEWITT.

Leslie R. Hewitt was born at Olympia, Washington, September 12, 1867. In 1876 he came with his parents to California, and settled at Los Angeles. He entered the public schools of that city, and remained until he was graduated from the High School in 1885. In 1886 he became a student at the University of California, at Berkeley, and he was graduated from that institution in 1890.

Returning home from the State University, Mr. Hewitt began the study of law in the fall of 1890. He was employed as a clerk, while prosecuting his studies, in various offices of his city. He was admitted to the bar at San Francisco in August, 1893, and began the practice of his chosen profession at Los Angeles in the fall of 1894.

In 1899 Mr. Hewitt was appointed assistant city attorney by City Attorney Walter F. Haas, which position he is at present filling under Mr. Mathews, the present city attorney of Los Angeles.

WILLIAM HENDRICKSON, JR.

Mr. Hendrickson was born in San Francisco November 22, 1863. His parents came from New Jersey, his father being a California pioneer. Mr. Hendrickson was educated at Pennington Seminary, New Jersey, Dickinson

College, Pennsylvania, and at Hastings College of the Law. In 1892 he was elected to the assembly as a Democrat, from the Forty-second district, San Francisco, and served at the session of January-March, 1893. He has been in good and steady practice at the bar of his native city since 1888.

A. W. HILL.

Arthur Wellesley Hill is a practicing attorney at Eureka, Humboldt county. He graduated from Hastings College of the Law in 1893. While a junior at college he was admitted to practice in all the courts of the State. He passed the examination before the Supreme Court in a manner highly creditable to himself and his college. He evidently believed that whatever is worth doing at all is worth doing well, and he continued his legal studies at the law college of the State University, until the completion of his course, when he was awarded the degree of LL. B. by the university.

From June, 1892, to June, 1893, Mr. Hill was associated with Hon. A. P. Van Duzer, of San Francisco. Since that time he has been one of the prominent members of the Humboldt county bar, and makes as his specialties, land, mining and corporation law.

He served with distinction as a member of the California legislature, during the thirty-second session. His course as a legislator was fearless and honest—so much so that not even the partisan press, in its bitter attacks upon the legislature, could say aught against his character or his conduct.

Mr. Hill was born in Eureka, Cal., September 18, 1864. In his political views he is Republican, and is one of the most effictive campaign speakers of his county. He never descends to personal abuse, preferring to deal with principles and theories, which he subjects to a rigorous analysis. In his chosen profession he has few superiors, and he is a forceful, logical and fluent speaker. The strength of his argument is equalled by the thoroughness with which he does his work, both in the office and in the court room.

BEVERLY L. HODGHEAD.

Beverly L. Hodghead has been at the San Francisco bar since 1891, having been admitted to practice in the Supreme Court on June 24th of that year. He attended the University of California, and afterwards was graduated from Hastings College of the Law. He was born at Lexington, Virginia, March 21, 1865, being the youngest son of a Presbyterian minister. He was married in 1894, and resides in Berkeley. Since his admission to practice he has acquired a good clientage and has been one of the most successful of the younger attorneys at the San Francisco bar.

FREDERICK W. GREGG.

Frederick W. Gregg, of the law firm of Otis & Gregg, is a Vermonter by birth, and was educated at Norwich Military University, at Northfield, Vermont, and at Dartmouth College, from which latter place he was graduated in 1878. He studied law at the office of Hon. Frank Flumway, in Northfield, New York, and at the Columbia Law School. He opened a law office in Tucson, Arizona, in June, 1881. In March, 1882, he was appointed United States commissioner for the first judicial district of Arizona, which office he filled for two years. He ran for district attorney, for Pima county, Arizona, on the Republican ticket, and was defeated by a few votes. In March, 1885, upon the petition of the members of the bar of that county, Mr. Gregg was

appointed County Judge of Pima county, and at the expiration of his term, was re-elected to the office, receiving a larger vote than any other candidate of his party on the county ticket. In the summer of 1887 he removed to San Bernardino, Cal., and entered into partnership with Hon. William A. Harris, which patnership continued for six years, and until the removal of Mr. Harris to the city of Los Angeles. In 1896 he formed his present partnership with Judge George E. Otis, at the close of the term of office of the latter as Superior Judge of San Bernardino county.

Mr. Gregg has had, for many years, a large practice in San Bernardino county, and is still comparatively a young man.

J. C. HIZAR.

Julier Clyde Hizar was born November 5, 1871, at Fort Ancient, Warren County, Ohio. His father was a merchant, his grandfather a Methodist minister, and his mother a direct descendant from Madam Owens of Fort Harmar Block House fame, the first white woman inhabitant of Ohio. His early life was spent in Paris, Ill., and in Marietta and Lebanon, Ohio. At an early age he acquired a fondness for mathematics and the classics, graduating from the National Normal University, of Lebanon, Ohio, at the age of twenty, taking two degrees, that of B. S. and A. B. Immediately thereafter he was offered

the principalship of the public schools of Clay Center, Kansas, but declined in order to pursue the study of law. He studied at the Cincinnati Law School, and was admitted to the bar in California in 1894. Mr. Hizar is the present incumbent of the office of city attorney of Coronado, where he resides, and he is the junior member of the law firm of Mills and Hizar, of San Diego.

E. BURKE HOLLADAY.

Edmund Burke Holladay, generally known as "Burke" Holladay, a prominent lawyer of San Francisco, was born in that city on the 14th day of February, 1862. He is the only son of Samuel W. Holladay, who lives among the few survivors of the bar of '49. He was educated in the public schools of San Francisco, including the Boys' High School, and was graduated from Hastings College of the Law in 1883. He was admitted to practice by the State Supreme Court in June of that year. He was in partnership with his father from that time until the end of 1896, when he became associated in practice with Hon. Jefferson Chandler and J. P. Chandler. Since 1898 he has been alone in the practice.

On February 25, 1896, Mr. Holladay was married, at New York City, to Caroline D. Huntington, a niece of the railway magnate, Collis P. Huntington. They have two beautiful children, Helen, aged three, and Collis, aged two years.

ARTHUR C. HUSTON.

Arthur C. Huston is the son of the late W. S. Huston, who crossed the plains in 1849, and located in Yolo county. Mr. Huston was born at Knight's Landing, California, and received his education in the public schools and in Hesperian College at Woodland. After leaving college, he filled the position of city editor on two local papers. In 1891 Mr. Huston was appointed deputy county recorder. In 1893 he began the study of law in the office of Charles W. Thomas, and was admitted to practice in the Supreme Court, in January, 1895. Since that time he has been following the profession in Woodland. He has also filled the office of city attorney. Mr. Huston is a man of family, having married Miss Elizabeth Browning, a daughter of R. W. Browning, who is also a pioneer.

R. LANDON HORTON.

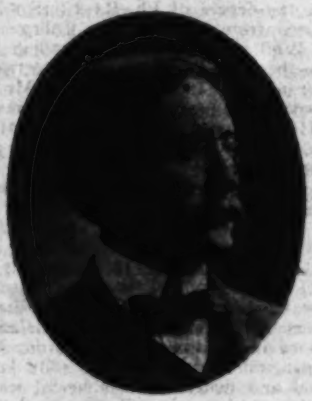
Rufus Landon Horton is a Wolverine, having been born at Niles, Michigan, on the 2nd day of September, 1861. His early education was received in that haven of lucky statesmen, Ohio, in the town of Wauseon where his parents, Richmond B. Horton and Anna M. Horton removed when he was but four years old. Mr. Horton comes of English stock and can trace his family history back many generations. His early ancestors came to America before the revolution and located on Long Island, afterward a branch of the family moved to the south and another remained in the north, some locating in Ohio and Michigan. On his mother's side there is a slight mixture of German blood and on his father's some of Scotch.

In 1875 he removed with his parents to Dallas, Texas, where he continued his education, and was graduated in 1880. He then taught school and read law during vacation. On the 1st day of May, 1887, he became a resident of Los Angeles and finished his legal studies with Judge Lucien Shaw. He was admitted to the bar by the Supreme Court on the 2nd day of April, 1887. Mr. Horton was not slow in acquiring business as before his admission to the Supreme Court he had been admitted to the Superior Court of Los Angeles county, and had tried several cases, one at least, of considerable importance, that of Bird et al. vs. Widney et al., a mechanics' lien suit, in which case Mr. Horton was suc-

cessful for his clients, although a stubborn technical fight was made by the defendant's attorneys. In the same year that he was admitted to the bar of the Supreme Court he argued a case of exceptional importance before that tribunal and was complimented upon his argument by Justice Paterson, one of the Justices of that bench.

He has been counsel in a number of important cases, not only in this State, but in Arizona and Texas as well. Some of the leading cases in which Mr. Horton has been attorney might be mentioned as follows:

Lauterbach vs. Voss was a case to determine heirship and was brought by a reputed daughter to recover an estate from the defendant, widow of Frederick Voss, deceased. Mr. Voss had taken the plaintiff when a baby, in Nevada, to raise as his own child; and afterward he married the defendant in Los Angeles, and died leaving the widow in ignorance of the proof of the paternity of the girl he raised.



The case took over a week in the trial. Over sixty witnesses were examined, and although it was as hard fought a contest as any ever tried in the county, Mr. Horton, who was alone for the defense as against an array of four lawyers for the plaintiff, was successful and the widow enjoys the estate that was justly hers.

The case of Crescent Coal Company as assignor of the Black Diamond Coal Company vs. the Diamond Coal Company, was a suit to enjoin the defendant from the use of its name and for $20,000 damages, for infringing the plaintiff's right to that name in its business. The cause was on trial three days, when the plaintiff rested. Mr. Horton, representing the defendant, moved the court for a non-suit against the plaintiff, and after argument the court granted the motion.

The case of the estate of Conception Alandiz, deceased, was a contest of a will. Mr. Horton represented two of the heirs, as contestants. The case was tried before a jury and consumed two weeks in the trial. Fully one hundred witnesses were examined. Mr. Horton made an able argument before the jury upon which he was highly complimented by those present. The jury retired and both sides were much in doubt as to the outcome, but after several hours of deliberation the jury returned a verdict in favor of the contestants, breaking the will. Property worth about $50,000 was involved. The suit of Methvin vs. the F. M. Ins. Co., was a suit on a policy of insurance. Mr. Horton represented the defendant company. The case was decided against his client in the Superior Court, but he advised an appeal to the Supreme Court.

In that court the cause was at first decided against the defendant company, by a decision in department. At this stage a lawyer representing the plaintiff, sought to compromise the case with Mr. Horton for his client. The answer was that the defendant, feeling its position was right, would not pay one dollar in the way of compromise; it would lose all or nothing.

Mr. Horton petitioned the Supreme Court for a rehearing in bank, which was granted, and in his argument before the court in bank reviewed the entire case, the facts and law applicable thereto. The cause was again submitted and after a period of several months the Supreme Court reversed its department decision, and the decision of the court below and decided the case in favor of the defendant. Many other cases might be mentioned but this list is sufficient to show the success Mr. Horton has met in his profession.

In politics he is a Republican, and is prominent in his party. He served two years on the city board of education. In 1896 Mr. Horton was married to Miss Millie Kurtz, daughter of Dr. Joseph Kurtz, a prominent physician and one of the pioneers of Los Angeles.

Mr. and Mrs. Horton reside at 351 South Alvarado street, in one of the most beautiful sections of elegant homes in the city of Los Angeles, overlooking West Lake Park.

EDWARD L. HUTCHISON.

Mr. Hutchison was born in Virginia. His family furnished one governor, one federal judge, and one lieutenant for Stonewall Jackson.

Mr. Hutchison spent several years as a boy on a farm, and as clerk in a village store in Ohio. When he was twenty-one, in 1885, he came to California, and located at Los Angeles. He worked there for three years as a carpenter, and attended night school, and then for seven years he was principal of various large schools in that city. He served in the city council for two years.

Mr. Hutchison's work in the council in regard to the water question, in favor of James C. Kays as arbitrator, in favor of taking the city census, which resulted in a count of 103,000, and which gave the city many additional postal employes, with an addition to their salaries, as well, his stand in favor of the shortening of the hours of work of policemen from ten and a half hours to eight hours, in favor

of the rights of the hackmen and the expressmen, in favor of the use of the Union label upon city printing, and upon all questions of interest or importance, are recorded and remembered.

Mr. Hutchison has been a well known contributor to the columns of the papers for the last ten years. He is an ardent lover of books, and has read nearly everything in standard literature. He also counts four modern languages among his scholastic attainments.

He spent his odd time during nearly ten years in studying law, and has practiced that profession since he made the race for lieutenant governor on the Democratic ticket in 1898. He was the Democratic candidate for city attorney of Los Angeles in 1900.

Mr. Hutchison has had exceptional success in private practice. His list of acquaintances is very large, and includes the greater part of the population of the city in all walks of life.

He is a Past Grand of the Odd Fellows, a Past Commander of the Maccabees, a member of I. O. O. F. Encampment, the Rebekahs, the Knights of Pythias, the Knights of Labor, and the Fraternal Brotherhood. The Los Angeles *Herald*, in writing of him in 1900 said:

"His life of thirty-six years has been a busy one, and he may be called aggressive in every way. His public career is well known, and his private life above reproach, unless it be a reproach that he remains a bachelor; but his statement that he is 'too busy to marry' must be accepted as a valid excuse."

WILLIAM P. JAMES.

Judge James was born near the city of Buffalo, New York, January 10, 1870. When he was three years old he removed with his parents to California, and has resided in the county of Los Angeles ever since. He was graduated from the Los Angeles High School, and received admission papers to the State University, but took up the study of law, at the same time engaging in newspaper work in Los Angeles. He was admitted to the bar in 1894, and in January, 1895, was appointed deputy district attorney under Major J. A. Donnell, remaining in the district attorney's office for four years. In the fall of 1898, he received the Republican nomination for Justice of the Peace of Los Angeles township, to which position he was elected in the following November, for a four years' term, which will expire in January, 1903.

GEORGE L. JONES.

Mr. Jones is the son of W. C. Jones, a physician and surgeon, well known throughout Northern California. He was born at Truckee, Nevada county, California, May 11, 1873. He located at Grass Valley with his parents in 1875, and that has been his home ever since, with the exception of the period spent at college.

He attended the University of California at Berkeley, and graduated therefrom in 1895, receiving the degree of Ph. B. In 1897 he was graduated from the Hastings College of the Law. While attending that law college he was also in the offices of Delmas & Shortridge, in San Francisco. In August, 1897, Mr. Jones commenced the practice of law in Grass Valley. He is the attorney for the city of Grass Valley, and also attorney for the public administrator of Nevada county.

He is considered a young man of good attainments in his chosen profession.

JOHN G. JURY.

John G. Jury, one of the most successful members of the bar at San Jose, California, was born in the town of Houghton, state of Michigan, on August 23, 1866. On both the paternal and maternal sides he is descended from the sturdy ancient Britons, and the records and traditions of his family disclose many names among his ancestors who took active and prominent part in the struggles and victories of England, both on sea and on land. Mr. Jury's early boyhood was spent in the eastern states. In 1875 his parents moved to the state of Nevada, where he lived till 1884, in which year his residence was taken up in San Jose, California.

Like many other western lawyers, prior to his admission to the bar, he followed for a few years, first the vocation of a school teacher and later that of an editor. Mr. Jury's education is thorough and varied, having been acquired in the public schools and the San Jose State Normal, and under the tutelage of private instructors.

On May 2, 1892, Mr. Jury was admitted to the bar of the Supreme Court of the State. Within a brief time after his admission he began practice in San Jose, and has since met with more than usual success. He is esteemed by his clients and by members of the profession both in San Jose and wherever else he is known, as an able and skillful lawyer.

Besides representing very important interests and many influential clients in San Jose, he numbers among his non-resident clients such well-known persons as Hon. James D. Phelan of San Francisco, whose interests in Santa Clara county are second only in importance to his interests in San Francisco; Mrs. M. E. Mills, of San Mateo county, administratrix of the estate of Robert Mills, deceased, and others in various parts of the State. In addition to the customary labors of an attorney and counselor, Mr. Jury devotes considerable time to patent law, he being a registered solicitor of patents in the Patent Office at Washington.

JULIUS KAHN.

Hon. Julius Kahn, present member of the national house of representatives for a portion of San Francisco, twice elected thus far, as a Republican, from a Democratic district, was born at Kuppenheim, in the Grand Duchy of Baden, on the 28th day of February, 1861. Our own fair land, where he was destined to attain to high public station, was at that time just passing into the shadow of a four years' war. Coming with his parents to California in 1866, he was educated in the public schools of San Francisco, and was graduated from the Boys' High School in the class of 1878. After leaving school, Mr. Kahn, before attaining his majority, entered the theatrical profession, which he followed for ten years, playing with Edwin Booth, Joseph Jefferson, Tomasso Salvini, Mr. and Mrs. W. J. Florence, Clara Morris, and other well-known "stars." He began the study of law at San Francisco in 1890, in the office of T. C. Coogan. In 1892 he was elected to the assembly, and served in the thirtieth session of the legislature—January-March, 1893. The assembly was Democratic and the senate Republican at that session. In July, 1893, he was chosen secretary of the finance committee of the California Mid-winter International Exhibition of the succeeding winter.

In January, 1894, Mr. Kahn was admitted to the bar by the State Supreme Court. He began the practice of law at once, keeping his office with Mr. Coogan. The two gentlemen have ever since continued their office association, without being in business partnership. Mr. Kahn is a man of heavy build physically, of strong personality, with a genial countenance and agreeable manners. He is generally esteemed. His methods are deliberate. He had attained fair success at the bar, and his name was connected with some important test cases of public interest, when, in the fall of 1898, he was elected to the lower house of congress, as a Republican (from Judge Maguire's old Democratic district, San Francisco), defeating James H. Barry, Democrat, and editor of the *Weekly Star;* W. J. Martin, Socialist-Labor, and Joseph P. Kelly, Independent Democrat. His plurality was 1600. On November 6, 1900, Mr. Kahn was re-elected to congress, defeating Hon. R. Porter Ashe, Democrat, by a large majority.

JOHN W. KEMP.

Mr. Kemp was born in the state of Wisconsin, June 2, 1863. His father was born in the highlands of Scotland; his father, in Canada, of English parents. He came with his parents to California in 1868, and grew up in the northern part of the State. His education was received in the common schools, and at the Stockton Business College and Normal School, from which latter institution he was graduated in 1884. From 1886 to 1889, inclusive, he was engaged in teaching school. He read law in the office of D. W. Jenks, Esq., one of the leading attorneys of the northern counties, and, upon being admitted to the bar of the Supreme Court, began practice in Modoc county, in 1889. In 1891 he went to the southern part of the State, locating in San Diego. There he continued his legal studies in the office of Hon. John D. Works, until 1892. In that year he was admitted to practice by the Supreme Court and the United States courts, at Los Angeles. Throughout the same year he was in the office of Hon. Olin Wellborn at San Diego.

Mr. Kemp removed to Los Angeles on January 1, 1893, and has ever since been engaged in active practice there. For some years he has had a large business, of varied character, and is generally recognized as a careful and accomplished practitioner. His success is the result of hard work and unflagging watchfulness over interests of his clients. He is a self-made man. He has never aspired to public office, and is happiest when occupied with professional business.

ELIZABETH L. KENNEY.

Miss Elizabeth L. Kenney was born in Mattoon, Illinois, July 4, 1869. Her father was a merchant. Her mother is a prominent worker in the cause of temperance, and has been president of the W. C. T. U. of Southern California. Miss Kenney studied at Stanford University. She was graduated from the Northwestern University at Chicago in 1897, with the degree of LL. B. Since that time she has practiced law at Los Angeles, California. Her specialties are wills and probate, and the property rights of women and children.

C. N. KIRKBRIDE.

Charles N. Kirkbride was born in Pueblo, Colorado, November 15, 1868. He received his primary education in the public schools of Southern Illinois, Nevada, and California. He entered the University of the Pacific at San Jose, Cal., in 1884, and was graduated in 1887, with the degree of Ph. B. He then became a reporter on the San Jose *Mercury*, and so continued for two years. Subsequently he was associated with others in the publication of the *Leader*, a newspaper at San Mateo, and afterwards becoming editor of the *Times Gazette* at Redwood City. In 1891 we went to Chicago and entered the Northwestern University Law School, graduating in 1893, with the degree

of LL. B. He was admitted to the bar in Illinois, but did not practice in that State. Returning to California, he received his license on October 3, 1893, and in December, 1894, returned to his former residence, San Mateo, and opened an office.

Early in 1895, Mr. Kirkbride became the city attorney of San Mateo, a position which he still holds. He was among those instrumental in organizing the League of California Municipalities, and is now chairman of the judiciary committee of that body.

FRANKLIN K. LANE.

The popular and efficient city and county attorney of San Francisco, who has been twice elected to that office by unexampled majorities, was born in the year 1864. His boyhood was spent in Napa and Oakland, where he attended the public schools, graduating from the High School in Oakland at sixteen years of age. Afterwards he took a special course of study at the University of California, and later spent two years at the Hastings College of the Law, at the end of which time he was examined by the Supreme Court and admitted to the bar.

Like many other men who have later distinguished themselves in the law, Mr. Lane spent several years in journalistic work, for a time in New York City, as a correspondent

for Western papers, and in editorial work, and again as the proprietor and editor of a daily paper in the city of Tacoma, Washington.

Mr. Lane has never offered himself as a candidate for any other office than that which he now occupies, but he has for many years taken a very keen interest in political affairs. At various times he has spoken in advocacy of Democratic candidates and principles, not alone in California, but in Massachusetts, New York, Pennsylvania, Washington and other states.

In November, 1898, Mr. Lane was elected city and county attorney of San Francisco, defeating ex-Justice of the Supreme Court W. F. Fitzgerald by a majority that caused general surprise.

One year later Mr. Lane was re-elected, by a majority of 12,412, the largest majority ever given to a candidate for that office. In 1899 the grand jury reported that not one dollar in judgments had been recovered against the city during Mr. Lane's incumbency as city attorney, and in 1900 the grand jury said: "We found the office of the city and county attorney to be conducted in the best possible manner."

Mr. Lane was leading counsel for the city in the case of Fragley vs. Phelan, in which the validity of the new charter of San Francisco was established. Since the coming into operation of this new organic law, the labors of the city attorney have been of a very high order, it has devolved upon him to interpret and construe the charter for all the departments of the municipality. Upon attempt being made to operate thereunder, the charter was found to be full of ambiguities and inconsistencies, which it has been the difficult duty of the city attorney to make clear and straight. The work done by Mr. Lane under the charter evidences a constructive type of mind, and has greatly added to his professional reputation. His opinions have been clear, simple and direct in style, appealing to the layman as to the lawyer by their absence of all trace of pedantry.

CLARENCE F. LEA.

Clarence F. Lea is a native son, having been born at Highland Springs, Lake county, California, July 11, 1874. His great-grandfather bore American arms in the Revolutionary War. Mr. Lea was born on the farm, paid his own way through college, attended Stanford University two years, and graduated from the University of Denver in 1898. He was editor of the University Annual for his department of the university during his last year of attendance there. At the preparatory school and at college, young Lea took an active part in debating societies. At the age of twenty-two he took the platform for his party, and was considered a successful campaigner. In 1897 he passed the bar examinations for admission to the Supreme Court of Colorado, with a standing next to the highest in his class. After having been admitted to the bar, he was paid the unusual compliment of being retained by his first client, to argue a case before the Supreme Court. A few months after his graduation Mr. Lea returned to California and settled at Santa Rosa, where he is engaged in the practice of his chosen profession. He is of the firm of Schlotterback & Lea, and is one of the youngest members of the Sonoma county bar.

F. A. LEONARD.

F. A. Leonard was born at Watertown, Wisconsin, in December, 1864. His father was a sufferer from asthma, which caused his removal from St. Louis to Colorado, in 1872; later to New Mexico, and then to San Bernardino, California.

Walter H. Linforth

Mr. Leonard's father was an attorney of considerable reputation and ability, having been for some years prior to his removal to Colorado, Circuit Judge in the state of Missouri, and in 1870 was the Republican nominee for a positon on the Supreme bench of that state; and in 1889 he was notified by General Lew Wallace, of President Harrison's intention to appoint him on the Supreme bench in New Mexico, but at the time he was suffering from an illness which soon thereafter resulted in his death.

F. A. Leonard passed his school days in Boulder, Colorado, and attended the State University located at that place. He entered the St. Louis Law School in 1885, and after completing the course, was admitted to practice in New Mexico, in 1887. Removing to California in 1888, he located at San Bernardino, and formed a partnership with Henry Goodcell, which continued for eight years. He is now practicing by himself, and possesses a good business.

Mr. Leonard was married to Fannie E. Sawyer, at Boulder, Colorado, in 1891. He has a boy of six and a girl of two years.

WALTER H. LINFORTH.

Walter Herbert Linforth was born in San Francisco, November 10, 1869. His father, Edward H. Linforth, and his mother, Ellen Linforth, were both born in Birmingham, England. They came from there to California in 1868, and located in San Francisco. Walter H. Linforth was educated in the public schools of San Francisco. At an early age he entered the law office of Henry E. Highton, and remained there about eight years, studying law and part of the time acting as managing clerk. He was admitted to practice by the Supreme Court at Sacramento on his twenty-first birthday, November 10, 1890.

Mr. Linforth remained in the office of Mr. Highton until the latter part of 1892, when he commenced the practice of the law on his own account. Since the completion of the Claus Spreckels building, his office has been therein. He has a general practice of great value.

Mr. Linforth took an active part, with H. E. Highton and Judge E. D. Wheeler, in presentation of the claims of Alice Edith Blythe to the great Blythe estate. He was one of the leading counsel for the wife in the White divorce case, in which the defendant was the "Mendocino Cattle King"—so called. Mr. Linforth, with Grove L. Johnson, tried the Henry Martin will contest, representing "Baby John." He successfully maintained the right of Mrs. Myra E. Wright to recover from the defunct Union Savings Bank of San Jose, after its insolvency, sixty thousand dollars, loaned by her to the bank before its failure—instead of her being compelled to pro rate with the general creditors. He has tried numerous railroad cases, getting heavy verdicts. He also tried the libel case of George D. Graybill against the *Chronicle*, recovering a verdict for $1000.

The case that probably afforded Mr. Linforth the most pleasure to try was that of Albert Roche against E. J. ("Lucky") Baldwin. Roche was the assignee of Mr. Highton, and the action was to recover $10,000, the amount claimed by Mr. Highton as his fee for trying for Baldwin the Ashley-Baldwin seduction case. The action to recover Mr. Highton's fee was tried before Judge Hunt and a jury, and a verdict was rendered in plaintiff's favor for $8700.

Mr. Linforth now represents a number of leading firms and corporations, including W. W. Montague & Co., the San Jose Fruit Packing Company, the Jersey Island Dredging Company, the Sheba Gold Mining Company, and the Jacalitas Petroleum Company.

Mr. Linforth is a bachelor. At the age of thirty-one he is one of the best-known lawyers in the State. His activity is extraordinary. He tries a great many cases for other leading law firms, being generally accounted a most talented trial lawyer. Personally, he is of very agreeable manners, and is held in universal regard.

CARL E. LINDSAY.

Mr. Lindsay was born at Bucyrus, Ohio, December 6, 1861. He removed to Salem, Oregon, in 1871, and to California in 1876. He was educated in the academic department of Willamette University, and at the State Normal School at San Jose, California. He received a first-grade teacher's certificate when eighteen years of age. He taught one year at Darwin, Inyo county, California, and subsequently in Santa Cruz county, and for seven years was principal of the Branciforte Grammar School, Santa Cruz. He was admitted to the bar in 1890, while still teaching, and, in the same year, was elected district attorney of Santa Cruz county, shortly after being admitted to practice, and before leaving the school room. He was re-elected to the office of district attorney twice, serving eight years in all. He was admitted to practice before the United States Supreme Court in 1897.

LOUIS LUCKEL.

Louis Luckel, of the Los Angeles bar, is a native of Kentucky, was born August 15, 1861, and has since 1887 made California his home. He enjoys a wide acquaintance throughout the State. A careful student of the law, Mr. Luckel has also devoted much of his time to the acquisition of foreign languages, and enjoys the distinction of being probably the only lawyer in this country who speaks Chinese. At the bar his successes include, among others, the case of the Palmdale Irrigation District, in which the entire issue of bonds, amounting to $175,000, as also the existence of the district, as a legal organization, were decreed null and void.

Mr. Luckel was the nominee of the People's party in 1894 for attorney-general of California, and polled upwards of 68,000 votes, leading all but one of the nominees of his party.

DAVID LEISHMAN.

David Leishman was born on May 4th, 1867, at Livingston, county of Linlithgow, Scotland. His father was one of the parochial teachers of Scotland, and shortly after the

birth of the son removed to Currie School, within six miles of Edinburgh, Scotland.

David Leishman was educated first at Currie Parish School and afterwards in the Edinburgh Collegiate Institution in Edinburgh. After leaving the latter he received private tuition in the classics in Edinburgh with the intention of taking up the study of medicine. This he abandoned later and came to California, and finally entered the profession of teaching. He was elected county superintendent of schools of Del Norte county, and served four years, and during that period devoted his spare time to the study of the law until he was finally admitted to the Supreme Court of California. He then located at Ukiah, Mendocino county, and engaged in a busy practice for some years. In the summer of 1900 Mr. Leishman removed to San Francisco, where he is now actively following his profession.

J. R. LEPPO.

J. R. Leppo was admitted before the Supreme Court of California in 1890, and shortly thereafter was appointed assistant district attorney of Sonoma county. He continued in this position, under both Republican and Democratic administrations, until 1895, when he resigned his office to enter into partnership with Albert G. Burnett at Santa Rosa. This association was terminated in 1897, by Mr. Burnett's election as Superior Judge of Sonoma county, since which time Mr. Leppo has engaged in the practice alone. His career as a lawyer has been successful, and he is recognized as an able, energetic and aggressive, but careful, practitioner and counsellor, and his integrity is unquestioned.

Mr. Leppo was born in Iowa, November 8, 1866, but came with his parents to California in 1882, where he has since resided, the greater portion of which time at Santa Rosa. He is an enthusiast in shooting, fishing and

driving, and other outdoor diversions. These enable him to apply himself the more effectively to his profession. He is a man of great industry.

WARREN E. LLOYD.

Warren E. Lloyd is a young member of the Los Angeles bar, who has availed himself of more than ordinary opportunities for preparation for his profession. He was graduated with the degrees of "B. L." and "M. L." from the University of California in 1895, after which he continued his studies in the universities of Berlin and Munich. Returning to Yale University in order to accept a fellowship offered him by the Yale Alumni Association of California, he received the degree of "Ph. D." from that institution in 1898. Thus equipped, he took up the law in earnest, and entered the office of the well known firm of Bicknell, Gibson & Trask, of Los Angeles, first as a student, and later as an assistant in the office. Recently he has taken offices of his own at rooms 340-341 Bradbury Block, Los Angeles, California.

Mr. Lloyd was born in Nebraska City, Nebraska, February 28, 1869, the son of Hon. Lewis Marshall Lloyd, for many years a practicing lawyer of Missouri, twice elected county attorney, and state senator from his district. Warren E. Lloyd moved with his parents to California in 1887, since which time with his father and brothers he has been connected with various successful business enterprises.

Among academic honors received by him while in college were the appointment as Charter Day speaker of the University of California in 1895, and the offer of an appointment as lecturer in philosophy at Yale University. He is an active member of the University Club of Los Angeles.

Clifford McClellan

CLIFFORD McCLELLAN.

Among the younger members of the California bar few are better, and none more favorably, known than Mr. Clifford McClellan, the junior member of the San Francisco law firm of McClellan & McClellan.

Mr. McClellan obtained a thorough education in the schools of San Francisco, the Berkeley High School, the University of California and the Hastings College of the Law. Graduating from the law school, he was admitted to practice by the Supreme Court of the State of California, May 21, 1896, immediately entering into practice with his brother, Mr. R. Bruce McClellan, which association still continues.

Mr. McClellan was born at Bridgeport, Connecticut, September 23, 1872, but came to California in his infancy, and has since remained here.

In his college days much prominence was attained in athletic circles, and many trophies adorn his home.

Like his brother, Mr. McClellan has always taken a deep interest in letters and politics, contributing his efforts largely to both fields. Much of his time has been given to mining and patent law, although his practice embraces all branches.

JOHN H. MAGOFFEY.

Mr. Magoffey was born at Scott's Bar in Siskiyou county, on the 1st of January, 1863. He passed his youth in that county until, at the age of majority, he removed to Sacramento, where he followed the profession of official stenographic reporter in the Superior Court, an occupation which he had previously followed for several years in the Superior Court of Siskiyou county. Upon the election of the Hon. C. H. Garoutte, now Associate Justice of the Supreme Court, as Superior Judge of Yolo county, Mr. Magoffey received the appointment of official stenographic reporter of that county, and kept the position until in 1890. In that year he was admitted to practice in the Supreme Court of this State. Afterward, in 1891, 1892 and 1893, he was city attorney of Woodland, the county seat of Yolo county. It was a period when a great many important legal questions arose, affecting the city government. Mr. Magoffey carried on the various actions to a successful termination so long as he continued to hold the office. In the beginning of the year of 1893 he resigned, to remove to Los Angeles. In January, 1894, he was recalled to the county of his nativity by the death of his father, and has since continued to reside there and practice his profession. He has built up a large and lucrative practice and enjoys the esteem of the people generally.

JAMES P. MAHAN.

James P. Mahan was born at Blue Lake, California, August 18, 1868. He is of Irish descent. He was educated at Blue Lake, Eureka, and San Jose in this State, and at Ann Arbor, Michigan. He was graduated from the law school of the University of Michigan in the class of 1895.

Mr. Mahan commenced practicing law in Eureka in 1895. He is senior member of the law firm of Mahan & Mahan, of that place. Before commencing the practice he had been at different times a farmer, woodsman, tallyman and school teacher. He was principal of the Blue Lake schools for seven terms. Mr. Mahan is a Democrat in politics, and has been secretary of the Democratic county committee of Humboldt county since 1896.

LAWRENCE E. MAHAN.

Lawrence E. Mahan was born in Blue Lake, California, on May 27th, 1871. He is of Irish descent; and is a graduate of the University of Michigan, of the class of 1895. In that year, 1895, he commenced the practice of law in Eureka. He is junior member of the law firm of Mahan & Mahan. Before taking up the practice of law he was a school teacher and a rancher. He is a Democrat in politics.

CHAS. A. MAU.

Charles Albert Mau was born at the Calistoga Hot Springs, Napa county, California, March 29th, 1869. His father was born in Germany and came to the United States at the age of fourteen years, settling in New York. He came to California in 1850, and became a prominent civil engineer.

Mr. Mau's mother is a native of New York. One of her ancestors was General William Prescott, of Bunker Hill fame.

Mr. Mau received a common school education, and at the age of twelve years, went to work on a farm in Capay valley, California. Leaving the farm, he went to San Francisco and finished his education. At the age of twenty-one years he entered the United States customs service, studying law at evenings. He afterward entered the law office of John H. Henderson in San Francisco, where he continued his studies until admitted to the bar in 1892. Since then he has continued to practice with much success. He also has been prominently connected with politics in this State, and has been president of the Republican club of his assembly district. He is of pleasing address and has a wide acquaintance. He is very much devoted to his profession, and his legal business has already called him to various parts of the State, and to New York city. He has a wife and a son. He was married at San Francisco, on the 11th of January, 1893, to Miss Louise Hofman, of that city.

A. B. McCUTCHEN.

A. B. McCutchen was born in Columbia, Missouri, August 14, 1866, and grew up in California, coming to this State at the age of five years. He was educated in the public schools and also under private tuition. He was engaged in general merchandising and the wholesale grocery business from 1884 to

1888, in San Francisco. In 1888-1890 he was assistant cashier of the Farmers' Savings Bank at Lakeport, California.

Mr. McCutchen studied law at San Diego, where he went in 1890, and entered the office of Hunsaker, Britt & Goodrich.

In 1891 he was admitted to the bar by the State Supreme Court. He removed to Los Angeles in 1893. Two of his San Diego preceptors, Messrs. Hunsaker and Goodrich, had already removed to the larger city, and were practicing there in partnership, and he now became one of the firm, which took the style of Hunsaker, Goodrich & McCutchen. This firm was dissolved in 1895. In 1896 the partnership of Goodrich & McCutchen was formed, and is still existing. This is one of the busiest firms in the State, and has always had the good will of the profession and the esteem of the bench.

Mr. McCutchen is in the full tide of prosperity in his profession, and is a most worthy man personally.

He married, on December 28, 1898, Miss Harriet A. Chapman, eldest daughter of John S. Chapman, the head of the Los Angeles bar (q. v.) They have one child, a boy, born March 5, 1900.

HENRY B. MAYO.

Henry B. Mayo, although hardly yet in his prime, has been well known and in successful practice at the San Francisco bar for many years. He was born in Peoria county, Illi-

nois, May 28, 1861. He came to California at the age of twelve, with his father, Colonel H. H. Mayo, who had been Colonel of the Fourteenth Illinois, and had been in business at Rock Island. His father's death occurred here, and the son went back to Illinois, attended school and prepared himself for the bar. He was admitted to practice in 1887. Prior to this, and after leaving school, he followed several other pursuits, and had many adventures and hardships, which need not be detailed, but which gave him breadth of view and helped to mould a strong character, and on which he looks back with much satisfaction. He is a genial man, a good talker and well read, and greatly devoted to the profession. He has been at the San Francisco bar ever since his admission, in 1887.

DANIEL McFADZEAN.

Daniel McFadzean was born in the province of Ontario, Canada, May 19, 1867. His ancestors were from Scotland. He spent his boyhood in Ontario, and obtained a common school education in the schools of that province. He afterwards prepared himself for a school teacher by taking a course in a professional training school, and in his eighteenth year commenced teaching. After pursuing this calling nearly three years he made a trip to Alabama, and shortly afterwards started for California, where he arrived in his twenty-first year. He located at Visalia, Tulare county, and taught in the high school of that city for four years. During his spare hours he read law, and after spending some time in the law offices of Mullany, Grant & Cushing, in San Francisco, he was admitted to the bar on examination before the Supreme Court of the State in August, 1893.

He immediately returned to Visalia, and there formed a law partnership with R. F. Roth, under the firm name of Roth & McFadzean, which firm still continues. In the same year he married Miss Nell Owen, a native daughter of Visalia, whose family has been identified with the public and political history of Tulare county since its formation.

Mr. McFadzean has for the past two years been president of the board of education of Visalia. He has been given the distinction of being elected master of the Masonic lodge of his city for two successive years.

Although both members of the firm of Roth & McFadzean are young men, they have been attorneys of record in many of the important cases that have arisen in the county.

JOHN L. McNAB.

Mr. McNab was born in Mendocino county, of Scotch parentage, March 3, 1874. His father was one of the leading photographers of Scotland, but was compelled by ill health to remove to California. He purchased a large ranch near Ukiah, and it was there that the son was born. The latter was educated in the common schools and at Oakland High School. He was brought up in a home life where he was in a literary atmosphere, and an extensive library was at his command. He read widely, and when about eighteen began contributing to the editorial columns of various weekly newspapers.

Mr. McNab, after devoted study of the law, was admitted to the bar immediately upon coming of age. He gave two years more to literary and historical application and legal branches, and then started in practice of law at Ukiah. Soon afterwards he was engaged in several important criminal cases. He assisted in the prosecution of the Dodge murder trial, in which case the defendant was sent

R. Bruce McClellan

to prison for life. Soon after this he defended Gregoria Berevara, the murderer of Benjamin Henderson, a wealthy resident. The defense was insanity, and, in the opinion of the older members of the bar, it was skillfully conducted.

After two years in practice, Mr. McNab formed a partnership with Maurice Hirsch, and the new firm, under the name of McNab & Hirsch, succeeded to the practice of J. A. Cooper, on his becoming a commissioner of the Supreme Court. The firm has an extensive practice, being attorneys for the bank of A. F. Redemeyer, the Bank of Mendocino, and a number of milling corporations; also a valuable probate practice, having handled a number of very large estates. The firm has quite a large library.

Mr. McNab takes an active interest in politics, but only as a citizen, not as a candidate. He gives to his practice most of his time. Under the auspices of the State central committee, he stumped the State for McKinley in 1900. He is an ardent student of oratory, gifted with a large vocabulary, and has a rapid delivery and a clear, strong voice; indeed, this native son, who is so well established in his native county, is one of the most pleasing and effective public speakers in the State.

R. BRUCE McCLELLAN.

This gentleman is the senior member of the law firm of McClellan & McClellan, with offices at San Francisco, California.

Mr. McClellan was born in San Francisco thirty years ago, and received his education in the public schools of that city, the High School at Berkeley, and the Hastings College of the Law, a department of the University of California. Admission to practice was granted Mr. McClellan by the Supreme Court of the State of California on January 11, 1892, and since that time he has been practicing in conjunction, first, with his father, the late R. Guy McClellan, and after the latter's demise, with his brother, Mr. Clifford McClellan.

During his student days considerable energy was devoted to journalistic work, followed later by contributions to literature in the way of sketches and short stories in the periodicals of the day. Politics have always been a source of keen interest to Mr. McClellan, but, although several times proffered nominations to high office, he has preferred to devote himself to his profession.

GEORGE W. MONTEITH.

George Wilfrid Monteith was born in Jackson, Michigan, April 9, 1862. His father, the Hon. John Monteith, was a popular and brilliant member of the famous Yale class of 1856, that graduated so many distinguished men, among whom are Justices Brown and Brewer, of the United States Supreme Court; Chauncey M. Depew, Chief Justice Magruder of Illinois, and many others. Mr. Monteith's mother was Maria Loomis, and she died in 1880. His father, originally a minister, removed from Jackson to Cleveland, Ohio, living there for three years, and going thence to St. Louis, in 1866, and residing in Missouri for twenty years. Mr. Monteith's grandfather, Rev. John Monteith, Sr., was the son of Lieutenant Daniel Monteith, an officer in the Virginia Regiment in the Revolutionary War. The family came from Scotland in 1710, and settled in Virginia; the younger branch of the family now residing in the Southern States. The Rev. John Monteith, Sr., married Abigail Harris, the daughter of Captain Luther Harris, an officer in one of the Connecticut regiments in the Revolutionary Army, and one of the pioneers who went from that state to settle the western reserve in northern Ohio, soon after the century began. The Rev. John Monteith, Sr., was the founder and first president of Michigan University, and after his marriage resided in Elyria, Ohio. Although of Southern parentage, he was an early pioneer in the movement for the abolition of slavery. He was a man of strong character, of great moral courage and of sterling integrity. Mr. Monteith's mother was a direct descendant, on her father's side, of Colonel Ezekiel Loomis, who commanded a New York regiment in the Revolutionary Army; and on her mother's side of Colonel William Lewis, a nephew of General Richard Montgomery, who fell at Quebec. She was born in Utica, and her family, the Loomis, is well known throughout New York state.

Mr. Monteith's father gave up the ministry in 1870, when he became state superintendent of schools under the administration of Governor B. Gratz Brown, and to him, more than to any other man, is the state of Missouri indebted for its magnificent public school system. At the end of his term, he returned to his farm, and soon after became secretary of the state board of agriculture.

George W. Monteith attended the public schools from the time he was seven until he was eleven years of age, when he entered the junior class of the Normal School at Warrensburg, Missouri. His progress as a scholar was exceedingly rapid, and so much so that had he remained at the Normal School he would have been able to graduate at the age of thirteen, five years under the legal age of graduation. He was taken from school in 1875 to his father's farm, and during the five years following lived the life of a plain, every-day country boy. During this period he had few companions, and spent most of his spare time in reading; he read all the standard literature, familiarized himself with history and political economy, and latterly, read most of the Greek and German philosophies. At the age of eighteen he went to St. Louis to start life on his own account. He first essayed journalism, and finally launched out in the publication of a railroad monthly, from which he earned enough money to carry out his ambition to study law. In October, 1881, he entered the St. Louis Law School, then under the management of that great legal educator, Dr. William G. Hammond. He attended both junior and senior lectures, and in seven months passed the examinations and was admitted to the bar; a month after he was twenty years of age. With his preceptor he was a pronounced favorite and in 1890, at the meeting of the

American Bar Association in Chicago, Dr. Hammond, in discussing Mr. Monteith with the president, David Dudley Field, said, "He is the best of all my boys; his keen wit, uncommonly quick mind, coupled with a fine memory, and a most remarkable faculty for analysis, exceeds that of any pupil I have ever known in all my twenty-five years of experience. His limitless resources, and his ability to think on his feet and speak without previous preparation, has surprised me again and again. I expect much of him in the future."

After being admitted to the bar, Mr. Monteith practiced law in St. Louis two or three years, living with his parents in a suburb of the city, called Webster Grove. In 1885 he came to California, and located in Riverside. Upon his arrival there, he did not know a single soul in the town, and had but seventeen dollars in his pocket. Within a year he had the best practice in the place, was city attorney, and assistant district attorney of the county. As an official he handled the business of the city so well that he never lost a case for it, but saved it a great deal of money. As a public prosecutor he was the terror of the evildoers of the community, although eminently fair and impartial in the prosecution of one accused of crime.

There are many incidents in his career which serve to illustrate his cleverness as a strategist, and his ability as a lawyer. His first case tried when a law student, was that of a darkey preacher, caught in the act of stealing wood from the railroad company, and placed on trial with a clear case of petit larceny against him. He secured Mr. Monteith to defend him. The prosecution made out a perfect case, without a single objection from Mr. Monteith, who, by way of defense, put twenty citizens on the stand to prove his own client would steal everything he could lay his hands upon. A physician followed, who explained the symptoms of kleptomania, and with an authority or two to establish it as valid defense, Mr. Monteith won the case. The effect on the negro population of the community was, however, demoralizing.

Trying a case in a justice's court, where his opponent was a lawyer of unsavory reputation, who had succeeded in filling the jury with his political adherents, Mr. Monteith first proved a good case, from which it was evident he was entitled to the verdict. As the case was being submitted to the jury he stood up and coolly told them that he knew they had been bribed to decide the case against his client; that he expected nothing at their hands, and dared them to deliver the goods. Both opposing counsel and jury were panic-stricken, and the latter, without a murmur, returned a verdict in favor of Mr. Monteith's client.

An ancient justice of the peace at Webster Grove, being defeated for re-election after many years of service, poured forth the anguish of his broken heart into the sympathetic ear of the young lawyer, who at once undertook the task of securing him an appointment from the County Court. For that purpose he resurrected an antiquated Missouri statute that for some unaccountable reason awarded an extra justice of the peace to each town or city in the state, "containing or located within five hundred yards of a spring of curative or supposed curative effects." To win his case Mr. Monteith only needed a spring, and found one four hundred and ninety-six yards from the town. A local physician prescribed the water to several patients, with results sufficient to enable him to certify to the "supposed curative effects" of the water, and the old justice obtained the coveted appointment.

Not far from Riverside, in the town of Colton, there lived a justice of the peace by the name of Earp, the father of the famous Earp boys. He had an old friend and crony by the name of Parks, a shrewd English pettifogger, who always dropped his h's. In Earp's court Parks was invincible, and all of the leading lawyers in San Bernardino county had, one after the other, fallen before his prowess, much to their disgust. They concluded to bring Mr. Monteith in contact with this difficult combination, and a San Bernardino lawyer in the plot induced him to appear in his place in a case before Earp, with Parks as his opponent. Mr. Monteith appeared at the appointed time with a large audience of his fellow-members at the bar on hand, to enjoy his discomfiture. Upon completing the testimony, Mr. Monteith quickly divining the purpose of the plotters, addressed the ancient justice, and told him that he fully appreciated both the learning of Parks and of the legal acumen of his honor; that while people generally believed that Parks had some undue influence with the court, still he did not think so, and that the reason that Parks always won his cases was due to his great discretion in only selecting good cases, and to the justice's keen discernment of the accuracy of Parks' logic. However, he said, there are exceptions to all rules, and this case would prove the exception that would prove the rule, in that, in this particular case, Parks had inadvertently gotten on the wrong side, and that the same painstaking discernment that had induced his honor to recognize the merits of Parks' other cases would lead him to recognize that in this one particular he had made a blunder. The justice availed himself of the opportunity to prove the rule by the exception, and found in favor of Mr. Monteith's side of the case.

While in the district attorney's office he tried everybody alike, on one occasion prosecuting two of his intimate friends, who becoming intoxicated, had torn down the signs and broken the windows of a young merchant just starting out in business. Neither personal friendship nor the strong local influence enlisted in favor of the culprits swayed him for one minute, and he succeeded in giving each of the young men a jail sentence. When the Gabilan murder occurred, a poor friendless old man was charged with the offense, upon evidence purely circumstantial. Public sentiment was at white heat against the accused. Mr. Monteith made a careful investigation in the matter, and satisfied himself that the wrong man had been arrested; and when the case came on for preliminary examination, in a crowded courtroom filled with angry men, fearlessly dismissed the charge. He was roundly

George W. Monteith

abused for it, and barely escaped personal violence, and the sentiment was so strong that his principal was defeated for re-election on account of the stand he had taken. The incoming district attorney unsuccessfully prosecuted the old man twice, and he died in jail, waiting his third trial. Shortly after new evidence developed, which demonstrated conclusively that the wrong man had been prosecuted, and that Mr. Monteith's view of the case was correct. It took no small amount of moral courage to stand up and dismiss this charge, and free this old man, who had not a friend in the world, or even a dollar to employ an attorney.

In 1887 ex-Governor Merrill, Richard Gird and others conceived the plan of connecting the Southern Pacific at Pomona with San Diego, and employed Mr. Monteith as their attorney. He sold out his fine practice in Riverside and removed to San Diego, where he incorporated the Pomona, Elsinore & San Diego Railroad. The projectors of this enterprise sent him and Mr. Gird to meet Mr. Huntington and Mr. Crocker in San Francisco, and after some preliminary suggestions, a final meeting was arranged in Governor Stanford's old office, at Fourth and Townsend streets. Mr. Creed Haymond, the attorney, produced a written agreement and turned it over to Mr. Huntington, who read it and laid it on the table. Mr. Monteith, much to Mr. Huntington's annoyance, picked it up and read it, and saw that it bound Mr. Gird personally to furnish the Southern Pacific with free right of way, station and terminal facilities on the entire line; an undertaking that would ruin Mr. Gird. In spite of warning scowls and nudges, Mr. Monteith called Mr. Gird out in the hall and induced him to refuse to attach his signature to the agreement, and to leave the building, while Mr. Monteith returned to the railroad magnate. Mr. Huntington was wrathy, he raved and stormed. Mr. Crocker reproached and Haymond cajoled, and all to no purpose. Mr. Monteith firmly and plainly told Mr. Huntington that he did not propose to permit his client to sign the agreement, and that he was utterly indifferent both to their threats and their promises of future preferment. Mr. Huntington told him that they had the power to make and unmake men in California, and warned him of the consequences of what he denominated his folly. Mr. Monteith was obdurate; the negotiations were ended, and the Southern Pacific never went to San Diego. Mr. Huntington never forgave Monteith, and Monteith never forgot Huntington. During the trial of the strikers in the United States District Court Frank M. Stone, the attorney, was called by the prosecution, and, by clever cross-examination, Mr. Monteith drew out of this witness all the evidence necessary to establish Mr. Huntington's violation of the interstate commerce law in giving Stone a pass for political reasons. Mr. Monteith then advised the strikers to have Mr. Huntington arrested, and he prepared and filed a complaint, which was signed by one of the strikers, charging Mr. Huntington with that offense, and in that way brought about his indictment by the Federal grand jury, which resulted in Mr. Huntington leaving hastily for Europe, where he remained until his New York lawyers, who appeared in his defense, arranged the matter to his satisfaction. In 1898 he brought Mr. Huntington before the railroad commissioners, and the latter, who had boasted of his willingness to answer the questions of others, quailed before answering the questions Mr. Monteith proposed to ask him, and refused to do so. Mr. Monteith had him cited for contempt. Huntington took a train and left the State, in the meantime getting the courts to enjoin the railroad commissioners from proceeding. Mr. Huntington never came to California afterwards without more or less apprehension as to what character of entertainment Mr. Monteith had in store for him. He hated him as he only hated Adolph Sutro, and in 1899, published a vitriolic interview in language that was neither chaste nor choice. Mr. Monteith replied with good-humored sarcasm by writing Mr. Huntington one of his famous open letters, wherein he drew a characteristic pen picture of the magnate in that piquant style of which he undoubtedly is a master. It was copied widely and Huntington felt keenly the lash so mercilessly laid on.

During his residence in San Diego, Mr. Monteith tried a number of important cases, including the famous Russell vs. McDowell election contest, where he succeeded in unearthing great frauds, and having the vote of three precincts thrown out. It required three months' trial, and the production of 1600 witnesses in open court to do this.

Mr. Monteith removed his office from San Diego to San Francisco in 1892, residing in San Rafael for six years, and finally removed to the city in 1898.

In 1894 he was employed to defend the American Railway Union strikers, indicted under the Sherman anti-trust act, for engaging in a conspiracy to retard interstate commerce. This great case was tried for five months before a jury, and is the longest criminal case of the kind ever tried. He defended it all alone, and in the end won the case.

In 1894 he was employed by the local labor unions to save the life of S. D. Worden, convicted of train wrecking, who was to be hanged on June 4. He had but four days in which to act, and spent two of these in an unsuccessful appeal to the Governor, and then obtained a writ of habeas corpus from the United States Court, perfected an appeal and obtained a stay of proceedings just in time to keep his man from being hanged, the scaffold being erected and the execution ready to take place, when the papers were served upon the warden. Ultimately, Worden's life was saved.

As a lawyer, he never engages in any business for any corporation exercising a public franchise, and a great deal of his business is among the poorer class of clients. His intimate knowledge of practice and his large fund of resources have brought him a great deal of business, which he has successfully handled after others have given it up.

The Corte-Madera land case litigation for forty years achieved its first success on behalf of the occupants under his management, and then in the Federal Supreme Court. An-

other example is the J. Z. Davis will case, in which nearly all the lawyers in San Francisco to whom it was offered had given it up, but he found a way in which to get his client into court.

GRATZ K. BROWN.

W. W. MIDDLECOFF.

Mr. Middlecoff was born in Missouri in 1871. His education was acquired in the public schools of that State, and in the University of Southern California at Los Angeles. He studied law in San Francisco, and was admitted to the bar in that city on July 25, 1892. Mr. Middlecoff is, although a young man, well known throughout the State, and has tried as many cases, perhaps, as any other attorney of his years. He is a member of the Knights of Pythias, F. & A. M., Union League Club of San Francisco, and the San Francisco Bar Association. He is now settled at Stockton, and is practicing in partnership with ex-Congressman James A. Loutitt (Loutitt & Middlecoff).

ALFRED J. MORGANSTERN.

Mr. Morganstern is a native of Pennsylvania. His education was acquired in the public schools of his native State and of the State of Minnesota. He began the practice of law in San Francisco in 1890, and has since figured in much litigation of a semi-political character. He has been a prominent figure in Republican politics in California since 1892, and until recently devoted much of his time to affairs of government. The growth of his private practice has gradually withdrawn him from political matters.

Mr. Morganstern has acquired a considerable reputation as a trial practitioner, and many of the poorer classes of San Francisco testify to the fact that he practices his profession rather from love of it than from mere gain. He is still a young man and his many engagements bespeak his activity.

JOHN W. MITCHELL.

John W. Mitchell, of the Los Angeles bar, was born in Lynchburg, Virginia, November 23, 1861. His early education was received in public and private schools. In his preparation for the bar he spent about five years in the office of John W. Daniel, now, and for some years past, United States senator. This was followed by a course in Professor Minor's law class at the University of Virginia. He was admitted to the bar in 1881. After practicing law in his native state for several years he removed to Texas, and followed the profession, first at Houston, then at Galveston.

Mr. Mitchell came to California in 1887. He located at Los Angeles, and has always since been at that bar. He soon acquired a fine practice. Among his clients are large corporations and manufacturing companies, whose legal business has turned him to corporation law as a specialty. He has conducted alone and taken to the higher courts some celebrated cases, notably the case of Byrne vs. Drain, street superintendent of Los Angeles. In this action, the procedure in the opening and widening of streets, which had been followed for years in Los Angeles, was set aside.

Also worthy of mention is the case of Swarth vs. The Los Angeles University, in the State and United States Courts, in which is involved the right to divert the use of property from the purpose intended by the donors—for educational purposes.

Mr. Mitchell is of Democratic politics. He has served for many years as a member of the State Central Committee of his party. He has made a state reputation as a campaign orator, and has taken the platform for his party in all sections of the State. In the campaign of 1894, which resulted in the election of Governor Budd, and in 1896, the first Bryan campaign, he was particularly active. A cultured man, he has contributed to literature, through

leading journals and magazines, is the author of several plays of decided merit, and has been editor-in-chief of an influential daily newspaper, the Houston (Texas) Post. His knowledge of law, his general learning, his conversational powers, and his personal address, make him an authority in his profession, and an interesting man in private life. His friends are many, including eminent men of our bench and bar, prominent citizens and public officials. These, from time to time, enjoy the hospitality of his beautiful home in the Western part, the fine residence section, of Los Angeles city.

Mr. Mitchell was united in marriage at Los Angeles on the 30th day of May, 1888, to the only daughter of Nathaniel C. Selby, of Kentucky.

There are no children of this union. Mrs. Mitchell was appointed by Governor Budd a trustee of Whittier State School, in 1895, and has since held this position. She has also been honored by being elected president of the board of trustees of Whittier State School. She has given particular study to the reformation of wayward children. She is regarded as an authority on this branch of sociological reform.

Louis Oneal

LOUIS ONEAL.

Louis Oneal, State senator-elect for the Thirty-first senatorial district, San Jose, was born in the town of Paradise Valley, near the boundary line of California and Nevada, in 1874. A young senator, indeed. But he was nominated by his party (Republican) for the office on August 18, 1900, amid great enthusiasm, after many speeches had been made in his eulogy, and was elected on the 6th of November by an overwhelming majority.

The Senator's father was a poor cattle ranger of Paradise Valley, and died when the son was a boy, leaving also a widow and a young daughter. "Louie" attended the country school in his native town, and by toil of various kinds, educated himself and maintained the family. After some years the cattle range was sold, and the family removed to San Jose. The son was now sixteen. He passed through the public schools with credit and took a college course. He then began the study of the law at San Jose, and in due time was admitted to practice by the Supreme Court. Leading attorneys had become interested in him and gave him advice and legal training. During this period he maintained himself and the family by clerking and driving a delivery wagon for Oscar Promis, the crockery merchant, holding the position until after his admission to the bar.

Mr. Oneal, not long after he began his professional career, manifested much skill and ability in the trial and argument of cases, and was appointed deputy district attorney, to fill a vacancy. Thereafter he was selected by the board of supervisors to fill a vacancy as justice of the peace. From this place he passed to the senate chamber at Sacramento. There he has already justified the good opinion and expectation of his constituency. He is a man of great natural force, a strong speaker, widely informed, and to a vigorous mind unites a sunny disposition.

JAMES C. NEEDHAM.

Hon. James Carson Needham, representative in congress from the Seventh district, comprising the counties of Stanislaus, Merced, San Benito, Madera, Fresno, Kings, Tulare, Kern, San Bernardino, Riverside, Orange and San Diego, was born in Carson City, Nevada, on September 17, 1864. He had his birth in an emigrant wagon, his parents being at the time en route across the plains to the golden shore, where he was fated to achieve distinction in law and politics.

Mr. Needham attended the public schools, and was duly graduated from the San Jose High School. He also took a collegiate course at the University of the Pacific at San Jose, graduating in the year 1886, with the degree of Ph. B. He then took up the study of law, and had spent a year in the law department of the University of Michigan when he was appointed, under civil service rules, to a clerkship in the adjutant-general's office at Washington, D. C. This position he soon relinquished, and returned to the Michigan University. He completed his law course, and was graduated with the class of 1889, with the degree of LL. B. Coming back to California, he located at Modesto, in November, 1889, and has ever since resided there, following the practice of law. He very soon became prominent at the bar, and on the Republican side of politics—indeed, his party nominated him for State senator in the following year. His district was strongly Democratic, and he was defeated. He has been chairman of the Republican county committee, and a member of the congressional committee. He was elected in 1898 to the Fifty-sixth congress, by a majority of 113 in a total vote of over 41,000, his Democratic competitor being Dr. C. H. Castle of Merced. In November, 1900, Mr. Needham was re-elected by a large majority, the Democratic candidate being Mr. W. D. Crichton, an able and successful lawyer of Fresno.

NATHAN NEWBY.

Mr. Newby is a native of Perquimans county, North Carolina. He was the son of a prosperous planter, and was born on his father's extensive plantation, September 30, 1868. From his sixth year he was reared at Hertford, the county seat, and attended Hertford Academy. He entered the law class at the University of Virginia in October, 1887, and was graduated in June of the following year, with the degree of Bachelor of Law, although the prescribed course of study contemplated, and usually necessitated, the period of two years at least.

Not being of age at the time of graduation, he entered the law office of Hon. T. G. Skinner then a member of Congress, representing the first North Carolina district, and further pursued the study of law while learning also the procedure in actual practice. He was admitted to the bar by the Supreme Court of North Carolina on September 28, 1889, at which time he was still two days under his majority. He entered on the profession in the far-famed "Land of the Sky," in his native state, with residence and office at Bryson City, and practiced in Swain and the adjoining counties constituting the Twelfth Judicial District.

So far as his share in the litigation of his district and his conduct and management of the same, are to be considered, Mr. Newby's professional career in that region was a distinguished success. He was, with an occasional exception, on one side or the other, of every action instituted, but law business was scant, and such employment as lawyers found was poorly compensated. Mr. Newby came to California and has always since lived and practiced at Los Angeles, at which city he located July 18, 1895. He says there was nothing overdrawn in the picture of that well-favored city, dashed off for him in the Old North State by a returned Californian, six years ago.

Mr. Newby is alone in the practice. His clientage is valuable and increasing.

He is an able and learned man, of careful

and correct professional methods. He is of Democratic politics, and has done brilliant and effective service for his party as a public speaker, especially in the campaign of 1896. Of fine example and pure life, he adorns the profession to which he is devoted.

Mr. Newby is a religious man, and was for two years State President of the Epworth League of the Methodist Church South in this State. He is one of the regular lecturers of the Los Angeles Law School, being one of the members of the bar of that city who give to the law school their services in this capacity without compensation. Hon. Lewis A. Groff, who is also federal postmaster at Los Angeles, is the dean of that school. Mr. Newby's subject is Torts, on which he delivers a lecture to the school once a week.

OSCAR C. MUELLER.

Probably no profession affords a wider field for individual enterprise and ability than does the law, and this fact has attracted to its ranks multitudes of ambitious young men in every generation since law became reduced to a recognized science. Our subject belongs to that class of young men. His father, Otto Mueller, now deceased, was, during his lifetime, one of the most prominent business men of Southern California. Oscar C. Mueller was born in Denver, Colorado, in 1876, but has resided in Los Angeles since 1880. He attended the public schools until he determined to devote his life to the law. His legal training was received in the law office of the late Judge W. H. Wilde, and at the University of Virginia. After being admitted to the Supreme Court of California he traveled extensively abroad. Shortly after his return to Los Angeles he went into partnership with Hon. C. C. Wright, but is at the present time engaged in the practice of law alone. While his practice is varied, he has made probate law and the law relating to real property his specialty. Mr. Mueller belongs to several Masonic orders. While he is not a politician in any sense of the word, he favors the platform of the Republican party. He was married, April 5, 1900, to Miss Ivy S. Schoder, daughter of Joseph Schoder, president of the Union Hardware and Metal Company, of Los Angeles.

HENRY MULVIHILL.

Henry Mulvihill, of San Francisco, was born and educated in Ireland. After graduating from college, he entered the law offices

of one of the most distinguished legal firms in Ireland. He applied himself closely to the practical as well as theoretical details of the profession, and there he gained that systematic legal training which is indispensable to success.

Mr. Mulvihill was admitted to practice by the Supreme Court of California, and by the United States Federal Courts. He is a close student, and devotes his whole time to the interest of his profession, and is building up a good business. He has a large and increasing clientele, and has hosts of friends.

HENRY NEWBURGH.

Henry Newburgh was born at Petaluma, California, in 1873. He was educated in the grammar schools and the High School of that place. He read law in the office of C. W. Cross, in San Francisco, and attended Hastings College, and was graduated from that institution in 1897. He has been in practice in San Francisco since that time, associated, but not as a partner, with Mr. Cross, before named, and F. P. Kelly. He is Noble Grand of Bay City Lodge, No. 71, of the Odd Fellows order.

Charles L. Patton

CHARLES L. PATTON.

Mr. Patton is not a "Philadelphia lawyer," but he first read law there. He is one of our own "native sons" of reputation, like Stephen M. White, William J. Hunsaker, and some others noticed in this History. He was born at Petaluma, in 1862. His early education was begun in the public schools of San Francisco. In 1869 he went to Philadelphia, and remained as late as 1885, graduating from one of the high schools there. That was the native city of his father, Charles Patton, who was born in 1812. The latter's father emigrated to Philadelphia from England about the year 1780. Our subject's mother, Elizabeth L. Clark, was also born in that city, in 1827. She was descended from Jonas Clark, ruling elder of Cambridge, Massachusetts, in 1630. She was descended through her mother from George Gray, who settled in Philadelphia in 1745. A large section in the southern part of that city is named Gray's Ferry, after George Gray.

Mr. Patton studied law in Philadelphia under the supervision of R. H. Hinckley. Returning to California in 1885, he was admitted to practice by our State Supreme Court, in January, 1887, and later by the federal courts at San Francisco. All of his professional career has been in that city. All of his practice has been in the civil line. He has a large and valuable business, elegant offices, splendid law and miscellaneous libraries, and is in easy circumstances. As we have had occasion to say of others of our subjects, Mr. Patton, in addition to his powers of mind, is a man of great physical strength. He is in the manifest enjoyment of hardy manhood and a well-regulated life.

Mr. Patton is prominent in the line of fraternal work. He is past grand master of Masons in California, and past grand chancellor of Knights of Pythias. He is of Republican politics. In 1898, at the age of thirty-six, he was the Republican candidate for mayor of San Francisco, against Hon. James D. Phelan. Mayor Phelan was then holding the office, and by his administration thereof had increased his popularity, and he was re-elected, in 1898, as, indeed, he was at the next election, over the distinguished citizen of wealth and learning, Hon. Horace Davis.

Mr. Patton married, at Oakland, California, June 4, 1887, Virginia M. Bowen. Mrs. Patton died at Cape May, New Jersey, August 17, 1900. There is no child of the union.

EDWARD M. NORTON.

This gentleman is the son of Colonel L. A. Norton, whose life of thrilling adventure has already been narrated.

He was born at Healdsburg, Cal., on the 17th of September, 1868. Admitted to the bar on the 20th of May, 1890, he has been in continuous practice at the place of his birth ever since. He began in association with his father, and from the date of the latter's death (August 16, 1891), he has been in partnership with Hon. W. W. Moreland (Moreland & Norton). He was city attorney of Healdsburg for four years. In that capacity he prosecuted the case of the City of Healdsburg vs. Geo. Mulligan et al., to a successful issue. This was a case of more general interest, perhaps, than any other that has ever arisen in that city. Mr. Norton is unmarried.

Mr. Norton received his early education in the public schools of Healdsburg, and he is a graduate of the University of California.

L. N. PETER.

Mr. Peter was born in Plumas county, March 24, 1872, and was raised on a farm in that county. He received his education in the public schools of Plumas, and commenced the study of law in the office of Judge C. E. McLaughlin, at Quincy, in the winter of 1893. He was admitted to practice by the Superior Court of Plumas county, in March, 1895. He remained in the office of Judge McLaughlin until January 1, 1897, at which time Judge McLaughlin assumed the duties of the office of Superior Judge of Plumas county. Mr. Peter then opened a law office in Quincy, and has practiced law ever since. He was admitted to the bar of the Supreme Court and to that of the United States Circuit Court in August, 1898.

In 1898 Mr. Peter was the Democratic nominee for district attorney of his county, but was defeated by the present incumbent, U. S. Webb, by ten votes. He is a member of the Native Sons of the Golden West.

He was married, February 22, 1899, and has one daughter.

JOSEPH R. PATTON.

Mr. Patton was born in the Uvas Valley, six miles northwest of Gilroy, in the county of Santa Clara, State of California, on the 11th day of March, 1861, and is the eldest son of Warren H. Patton, one of the early settlers and officers of that county. He attended the public schools in the neighborhood of his birth until 1874; then he spent one year in a private school, and in the year 1876 entered as a student in the University of the Pacific, located near San Jose. He was graduated from that institution on the 5th of June, 1879, with the degree of Bachelor of Philosophy. He then taught school for six months, and engaged in work in other directions for a year, and in October, 1880, entered as a law student in the law department of the University of Michigan, graduating therefrom on the 29th of March, 1882.

Before graduation, however, Mr. Patton, upon examination before the Supreme Court of the state of Michigan, was duly licensed to practice law in all the courts of that state. He has since been duly licensed to practice in the Federal, Supreme, Circuit and District Courts, and in the State Supreme Court of California.

Returning to California, he entered the office of the firm of Moore, Laine & Johnson of San Jose, and continued there for some months, and then went to San Luis Obispo county, and opened an office for himself in January, 1883.

In the fall of 1894 he received the nomination for district attorney, on the Republican ticket, and was elected, and served in such capacity for two years.

In the month of January, 1887, he returned to Santa Clara county, and opened his law office at San Jose, at which place he has since continued to reside.

Mr. Patton has given but little attention to criminal law since 1887, but has rather confined himself to the general practice, giving particular attention to the law of corporations, probate law and examination of land titles. In this capacity he has been employed by several of the largest corporations in Santa Clara county, and during the past ten years has handled some of the largest estates which have been administered on in that county.

In 1888 Mr. Patton was united in marriage to Nellie Flickinger, one of the daughters of the late J. H. Flickinger of San Jose. There are two sons of the union.

THOMAS ALLEN PERKINS.

This gentleman is a native of Wells, York county, Maine, the son of Samuel H. and Sarah (Allen) Perkins. On his father's side, his ancestors were among the earliest English settlers of New England. He is a descendant of John Perkins, of Ipswich, Mass., who came over with Roger Williams in the ship Lion in 1631. Other of his ancestors were: Rev. John Cotton, minister and author, and "father of Boston," who settled in Boston, Mass, in 1633; Judge Thomas Bradbury, who settled in York, Maine, in 1634; Major Robert Pike, "the Puritan who defended the Quakers, resisted clerical domination, and opposed witchcraft prosecution," and who came to Ipswich, Mass., in 1635; Edmund Littlefield, John Libby, John Sparks, and Dr. Bray Rosseter, of Guilford, Conn. On his mother's side, his ancestors were Quakers. The Allens and Neals were early settlers in Maine. His great-grandfather, Jacob Allen, served in the Revolutionary War.

Mr. Perkins began his education in the public schools, and prepared for college at

Berwick Academy, Maine. He graduated from Dartmouth College, in 1890, and later took the degree of M. A. from that college. He has since graduated from the University of California; and from Hastings' College of the Law, with the degree of L. L. B. He was admitted to the bar by the Supreme Court of California, in 1894. Since then he has practiced in San Francisco. He takes an active interest in educational institutions, and especially those from which he graduated. He is a member of Dartmouth chapter, Alpha Delta Phi; Legal Fraternity of Phi Delta Phi; Apollo Lodge, No. 123, I. O. O. F.; California Lodge, No. 1, F. & A. M.; and the Sons of the American Revolution.

W. G. POAGE.

W. G. Poage, district attorney of Mendocino county, was born in Bates county, Missouri, March 21, 1869. His father, S. C. Poage, who was also a lawyer, was a Confederate soldier, having enlisted as a boy of sixteen, and served during the four years of the Civil War. He was twice wounded and for some time a prisoner in a Northern prison during the latter part of the war. When the great conflict was over he returned to Missouri, and commenced the study of law. In 1870 he was admitted to the bar and began practice in Butler, the capital of the county. In 1876 he came to California and practiced for several years in Fresno, and then in San Luis Obispo, then going to Idaho, where he remained for three years. He was elected a member of the upper house of the Territorial legislature and went to Boise City and took

a prominent part in the deliberations of that body. He returned to California in order to find better educational facilities for his children. In 1884 he located in Ukiah and there followed his profession until the time of his death in 1894. He was for several years city attorney of Ukiah and was regarded as one of the best informed men at the bar.

His son, the subject of this sketch, was

educated in the public schools of California, and by his own efforts in private, and at the age of nineteen became a teacher of a district school in Mendocino county. He taught in various places until in 1891, when he entered the State University with the class of '95. He remained here two years, taking a course in History and Political Science, and after reading law in his father's office, and a year's study at Hastings College of Law, he was admitted to practice in the Supreme Court in January, 1894. In February following he was appointed city attorney of Ukiah. From the start he enjoyed a lucrative practice. In 1898 he was nominated by the Democratic party for district attorney and after a warmly contested campaign, during which he spoke from the stump in every precinct in the county, he was elected by a majority of 565 votes.

On March 21st, 1899, on his 30th birthday Mr. Poage was married to Miss Ella Laughlin, then one of the teachers of the Ukiah public school. He has a pleasant home in the suburbs of Ukiah. Mr. Poage is also interested in fruit culture and has one of the prettiest prune orchards in the valley situated near his home.

LOUIS C. PISTOLESI.

Louis C. Pistolesi, who is fast taking a prominent position among the members of the San Francisco bar, was born at San Francisco on the 1st day of January, 1866. His family, one of the oldest in Italy, counts amongst its sons many distinguished in the arts and sciences, and gave its name to the ancient city of Pistola. His father, G. Pistolesi, is one of the best-known merchants in San Francisco, where he has been many years engaged in the coffee business; he has resided in the State since 1850.

Louis C. Pistolesi received a common school education, and after graduating from Heald's Business College, engaged in the coffee business, but he soon abandoned mercantile pursuits for the study of law, and was admitted to the bar in 1892.

He has earned an enviable reputation for the earnest and energetic manner in which he guards the interests of his clients and has been rewarded by a considerable practice.

He is one of the most popular members of the order of Native Sons of the Golden West, and on the occasion of the reception tendered to the returning California Volunteers after the Spanish-American war, he was selected grand marshal of the largest parade ever seen in San Francisco.

He is past president of Sequoia Parlor, N. S. G. W., and now a deputy grand president of that order.

R. F. ROBERTSON.

R. F. Robertson, city attorney of Los Gatos, Santa Clara county, was born in Mazatlan, Mexico, on October 12, 1863, his father, R. L. Robertson, being at that time United States consul at that port.

He came with his parents to San Francisco when three months of age, and there received the rudiments of his education in the public schools. At the age of twenty years he moved to Los Gatos, where he has since continuously resided. He is well established in the practice. Mr. Robertson has been an active worker in fraternal matters, having been presiding officer in the local lodges of A. O. U. W., I. O. O. F., K. of P., and F. & A. M.

WALTER H. ROBINSON.

Walter H. Robinson came to California when four years old, and with his parents settled in Los Angeles, where he obtained his

education. His father died there when the son was very young, and the latter earned his own living and assisted his mother while preparing for his future career. He studied law with S. P. Mulford, now of Mulford & Pollard, entering that office in 1890. He remained there until 1893, when he obtained a lucrative position in a prominent law office in San Francisco, and while he had a great deal of work and obtained much experience, he had to work at night to prepare for examination before the Supreme Court. He was admitted to practice in 1896, and immediately thereafter became associated with Joseph H. Moore, of the old law firm of E. J. & J. H. Moore one of the oldest and best established firms of San Francisco. He remained with Mr. Moore until the latter's death, on February 8, 1899, and took over his offices and practice, which consisted principally of probate and land title matters. Mr. Robinson has continued with success in the same branches ever since, and is now enjoying a lucrative practice. It will be seen that he owes his success entirely to his own efforts.

E. M. REA.

Mr. Rea, of the San Jose law firm of Cobb & Rea, was born at Eureka, California, January 23, 1874. He was graduated from Leland Stanford University in 1895, with the degree of Bachelor of Arts, and from the law department of Harvard University in 1898, as LL. B. He was admitted to the bar of the Supreme

Court of California, September 8, 1898, and has since been practicing at San Jose, in association with C. W. Cobb, with offices in the Rea Building. A sketch of Mr. Cobb is on another page. This is a strong and active firm, conducting a most profitable business, and in high favor with the bar and the people.

GEO. T. ROLLEY.

George T. Rolley was born in Morris, Grundy county, Illinois, on the 5th of February, 1874. At an early age his parents moved to Fortuna, California, where he received his education. He studied law with Hon. J. N. Gillett and was admitted to practice before the Supreme Court of California in June, 1895. He is a member of several fraternal orders.

Mr. Rolley is a Republican, is very emphatic in his expressions on expansion, the holding of the Philippines, and believes the United States should have the finest navy afloat.

He was prominently mentioned as a candidate for State senator for the first senatorial district in 1900.

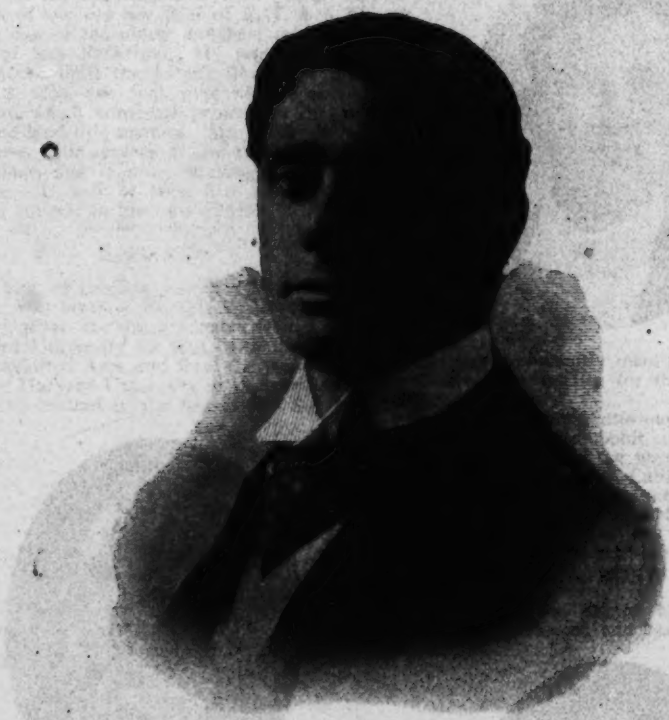
He was appointed attorney for the public administrator of Humboldt county in January, 1899, and still holds the position. His home and office are at Eureka, California.

There are few young men more worthy of confidence or more capable, and he has a good clientage.

A. RUEF.

This gentleman, at the age of thirty-six years, is experienced and mature at the bar.

His father, Meyer Ruef, is a prosperous citizen of San Francisco, now little past life's prime, and actively engaged in business in the



Edgar D. Peixoto

line of real estate. He gave his son a first-class education and saw him press his way, now a good many years ago, to a front place in his profession and also in the councils of the Republican party.

Abraham Ruef was born in San Francisco on September 2nd, 1864, and has always lived in that city. He was graduated from the University of California, academic department in May, 1883, and from the law department, Hastings College of the Law, in 1886. He has an extensive general practice, and has been connected with some of the most notable cases tried in our great city in recent years. In 1899 he was attorney for the public administrator. Mr. Ruef speaks fluently several languages. His addresses to court and jury are sincere, spirited and demonstrative, and are always well received.

He has acquired by his law practice a fine estate. He has always been "in politics," and with his professional and party engagements, he is one of the busiest of men.

EDGAR D. PEIXOTTO.

Mr. Peixotto was born in New York on December 23, 1867, and, although he is, at the close of 1900, only thirty-three years of age, he has been for seven or eight years past much in public view by reason of his connection with important litigation, his able conduct of trials and his general ability as a public speaker.

Mr. Peixotto comes of a distinguished family that easily traces its ancestry to remote times. The connection of the Peixotto family with America dates from the early settlement of Rhode Island, in the latter part of the seventeenth century. His grandfather, Dr. D. L. M. Peixotto, was a distinguished New York physician, a writer of ability, and dean of the faculty of medicine of Columbia College. His uncle, Benjamin F. Peixotto, was an eminent lawyer, at one time associated with Stephen A. Douglas, practiced for a short time in San Francisco, and became distinguished in the diplomatic service of the United States, occupying the positions of minister to Roumania, under President Grant, and consul at Lyons, under President Hayes. Mr. Peixotto's father, Raphael Peixotto, holds a high and respected position in the San Francisco community, and is a successful merchant. His brother, Ernest C. Peixotto, is the artist and writer whose work is so well known to the readers of Scribners, and another brother, Sidney S. Peixotto, has an enviable reputation through his connection with philanthropic work among the Boys' Clubs of San Francisco. His sister, Jessica B. Peixotto, has the distinction of being the second woman to receive the degree of Doctor of Philosophy in the University of California.

Mr. Peixotto was educated in the public schools of San Francisco, was graduated from Hastings College of the Law in June, 1888, and admitted to the bar of the State Supreme Court in January, 1889.

After his admission he spent a year in travel in the United States and Europe, and then began practice at San Francisco. In December, 1893, he became assistant district attorney of San Francisco, and had a distinguished part in the administration of the affairs of that office in a most eventful period of its long history. His principal was Hon. W. S. Barnes, who held the office for three terms. Mr. Peixotto conducted the prosecution of Patrick Collins, who was convicted of murder and hanged. He conducted the first trial of Jane Shattuck, who was convicted of murder and sentenced to life imprisonment, but who was granted a new trial by the Supreme Court.

Mr. Peixotto was Mr. Barnes' only assistant counsel in the trial of William Henry Theodore Durrant, for murder, in the summer of 1895 (the crime of a century), and made the opening address to the jury on behalf of the people. This argument is an excellent example of Mr. Peixotto's forcible and succinct style. In 1899 he wrote the history of that case, which was published by a Detroit house. The work is well illustrated and is designed both for the general reader and for the profession.

Shortly after this celebrated trial, Mr. Peixotto resigned from the district attorney's office, and has since been fully occupied with his private practice, having a fine library and elegant offices in the Claus Spreckels Building. In 1899, when the terms of the county officers were shortened to one year, on account of the adoption of a new city charter, Mr. Peixotto was attorney for the sheriff, Henry S. Martin. In 1896, and again in 1900, he was a delegate to the National Republican convention, and in the latter year he was secretary of the California delegation, and extended his travels to Europe, visiting the Exposition at Paris.

Mr. Peixotto has always been an ardent Republican, and is always heard on the stump in the various campaigns. He is a prominent member of the Bohemian and other clubs, and of several fraternal orders, and is well known and a favorite as a platform and after-dinner speaker. Mr. Peixotto is unmarried.

EARL ROGERS.

Anyone who has taken notice of the principal criminal cases in Los Angeles county during the last four years, but is at the same time not personally acquainted with Earl Rogers, will be surprised to learn that he is a man so young in years as here portrayed, for his name has appeared in connection with almost every important criminal case in that county during this period.

Such is the case; Earl Rogers, thirty-two years of age, stands today easily in the first rank of his profession in the criminal courts of Southern California. His is a unique and interesting personality, and his methods of handling a case differ widely from those used by the ordinary criminal lawyer. It might truly be said that at the present time he stands in a class alone, not only in his skill in this respect, but also in the number of big crim-

inal cases he has had and has fought to a successful termination.

In the last three years Mr. Rogers has defended more than one hundred felony cases in the courts of this State; and from this large number there is only one of these defendants who has ever passed behind the doors of the State prison; a record that probably cannot be equaled in this or any other state. It will readily be presumed, however, and correctly so, that he does not undertake the defense of every case that is presented to him. Unless he believes that there is, as he terms it, "a fighting chance to win," he invariably refuses to take the case, but once in, he fights from the drop of the hat, and clever indeed must be the prosecuting attorney who gains

even a temporary advantage. Every step is fought with unyielding determination, and with every weapon to be found in the arsenal of the criminal law. Earl Rogers is a born fighter, and was never known to quit.

In addition to having the leading criminal business of Los Angeles county, he has a large amount of civil business, to which he attends with the same care and diligence that he gives to his criminal cases.

One of the contributing causes to his great success is the fact that he never goes to trial without the most thorough preparation, both on the law and the facts. It is rarely ever that the opposing counsel is able to give him a surprise in any step in the case.

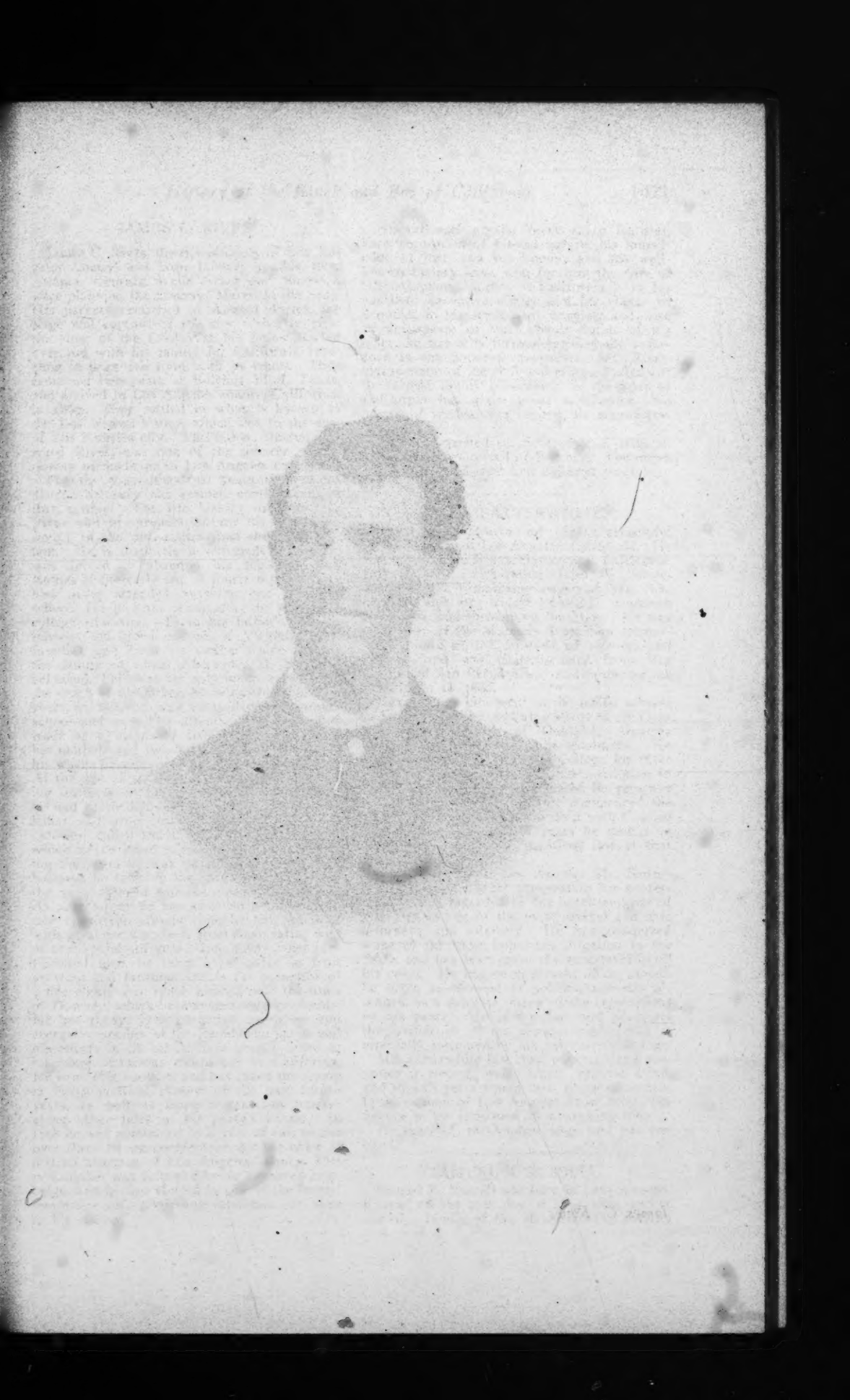
Although born in the state of New York, Mr. Rogers has lived in California practically all the time since he was four years old, taking out the years when he was completing his classical education at Syracuse University, New York.

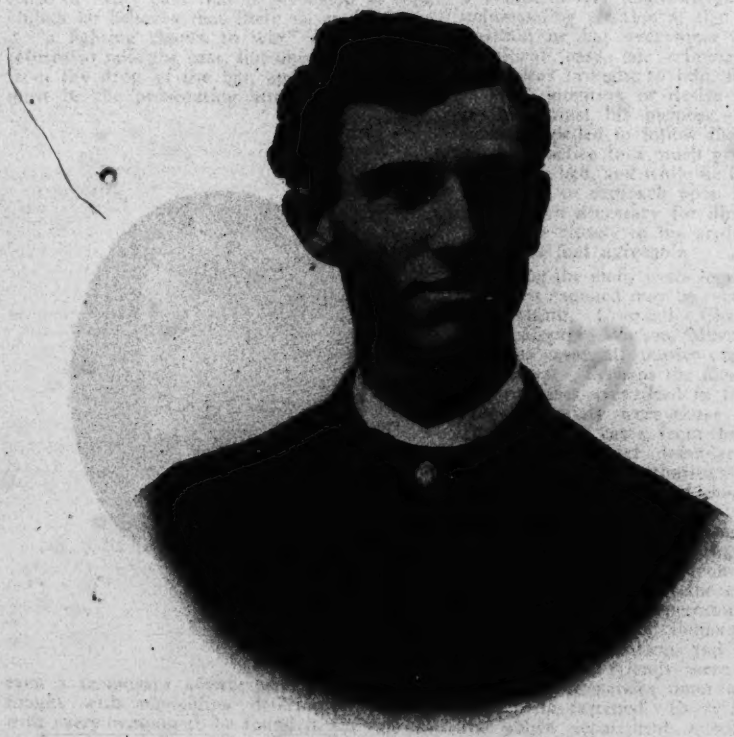
At the age of twenty-four he began the study of law in the office of the late Judge W. P. Gardiner of Los Angeles, and was admitted to the bar of the Supreme Court in October, 1894. He began the active practice of law for himself about one year later. For more than two years he worked and struggled as almost every young lawyer must, but at last his opportunity came, and when it came it found him ready for it. That was the Blackman embezzlement case, the most noted of its kind in recent years. In this case Mr. Rogers rose almost in a single day from the plane of a comparatively unknown young lawyer to a commanding position at the California bar, a position he has ever since held. After the Blackman case, one criminal case after another was brought to him, until without any original intention or desire on his part, but really against his purpose, he has been almost compelled to follow the criminal branch of the practice to a much greater extent than he has wished, and while he has not permitted this work to encroach upon his civil practice, it has been necessary for him to devote himself more closely to his profession than most attorneys find agreeable.

Among the many cases in which Mr. Rogers has been engaged may be especially mentioned the Alford, Crandall, Chaudfosse, Teresa Kerr, Mootry, Watson, Murray, Yglesias and Barboza cases, all murder cases of much public interest. Perhaps the most remarkable series of cases ever tried in the courts of Los Angeles county were those known generally as the Watson cases, from the name of Walter Watson, the chief defendant, and the one whom the police authorities tried hardest to convict. The history of these cases is fresh in the public mind. A very carnival of crime seemed to prevail in Los Angeles city. In the short course of three months over forty hold-ups and three murders from attempted hold-ups had occurred. All the efforts of the police to detect the perpetrators were fruitless. At last a young and industrious boilermaker named Walter Watson, and a number of his associates and friends were selected by the police as the parties upon whom the crimes were to be fastened. Every artifice known to the police department was made use of to convict Watson. He was tried on three separate charges, two for highway robbery and one for murder, and was triumphantly acquitted of all, in no case the jury being out more than ten minutes before returning a verdict of "not guilty." It may be said in passing that the actual criminals have never been arrested.

One of Mr. Rogers' strongest qualities is his readiness in the actual trial of a case. He is quick and alert, not a point either of weakness in the case of his opponent or of strength in his own escapes his immediate detection. Mr. Rogers is especially strong in cross-examination, in which his methods differ materially from those usually employed.

"If it be true that "the law is a jealous mistress,' but showers her choicest treasures upon him who gives himself entirely to her, then the future certainly has much in store for Earl Rogers.





James C. Rives

JAMES C. RIVES.

James C. Rives, district attorney of Los Angeles county, was born January 4, 1864, near Atlanta, Georgia, while Grant and Sherman were planning the famous "March to the Sea." His parents remained at Atlanta during the seige and capture of the city. Shortly after the close of the Civil War his father started overland with his family for California, traveling in primitive style, with ox teams. They remained two years at Sulphur Bluff, Texas, and arrived in Los Angeles county, California, in 1869. They settled in what is known as the Los Nietos Valley, which lies to the east of Los Angeles city. The father, Burrell Edward Rives, was one of the pioneer practitioners of medicine in Los Angeles county.

For the past thirty-two years the present district attorney has resided continuously in that county. The life history of James C. Rives and his preparation for his profession savors of the old, rather than the new, system. He is distinctly a self-made man. He was forced to abandon his schooling and studies at the early age of fourteen years. He had never attended anything but a public school. He had no opportunity to acquire a college education. From his father's side he inherits the blood of one of Virginia's best families, and from his mother's side that of the family to which Alexander H. Stephens belonged. This was his only inheritance. After the death of his father, he being then fourteen years of age, he was compelled to abandon school, and turned his attention to the printer's trade as a means of livelihood for himself, his mother, and two younger children. With his wages he supported himself and the family. At the age of sixteen he started in the printing business on his own account, and before he had reached his majority he was the publisher and proprietor of a weekly paper, at Downey, called the *Downey Weekly Review*, which he continued to publish with profit. During the years he was engaged in the printing business he took up the study of law, and in the year 1887 he entered upon the practice. As an attorney he has achieved great success, and up to the present time he has practiced with good fortune, both from financial as well as other points of view. Like many other professional men, he takes great pride in fruit growing and farming, and is the possessor of a fine eighty-acre ranch located near the town of Downey, which he manages very profitably. He has always been an active, consistent and energetic member of the Republican party, and his efforts in its behalf have greatly aided in its many victorious campaigns in California. He is an able speaker, and has taken the stump in every political contest of the past fifteen years, as well as being a ceaseless worker along other lines in his party's behalf. In 1898 he was nominated by a vote of two to one over three strong competitors, for the office of district attorney of Los Angeles county. This nomination was followed by an animated campaign, and he was elected by one of the largest majorities ever given any candidate for office in his county.

His tall and angular form, sharp features, keen perception of human nature, his knowledge of men and his humor, and his well-known history have won for him the title of "the Abraham Lincoln of California." In his excellent executive ability and his choice of deputies, in his scrupulous integrity and wise administration of the difficult duties of his office, he has still further justified the reference to the honored statesman. Mr. Rives' management of the civil and criminal affairs of the largest county government in the State of California has given great satisfaction. No breath of scandal has tainted his administration.

He was married on September 4, 1889, to Miss Mary L. Crowell of Downey. The union has been blessed with four children, three boys and one girl.

JOHN SATTERWHITE.

John Satterwhite is one of the successful young lawyers of Los Angeles, California. He was born in San Bernardino county, California, July 18, 1868. His father, John W. Satterwhite, was a prominent lawyer of San Bernardino, and was widely known in Southern California, and throughout the State. He was a member of the assembly from San Bernardino county at the sessions of 1865-66, and 1869-70, and was State senator from San Diego and San Bernardino counties during the years 1872 to 1880.

John Satterwhite went to the public schools in San Bernardino, and afterwards to the Oakland High School, at Oakland, Alameda county, California, where he graduated. He then went to Hastings Law College for three years, and graduated from that institution in June, 1891. After he graduated he returned to San Bernardino, where he commenced the practice of law in co-partnership with Colonel A. B. Paris. After two years he moved to Los Angeles, and has practiced law at that place ever since.

Since locating in Los Angeles Mr. Satterwhite has made great progress in his profession. He is regarded by the bench and bar of that city as one of the most careful and safe attorneys and advisers. He has conducted some of the most important litigation in the State, and has been unusually successful in all his cases. He has never sought office, though he takes an interest in politics, and has attended, as a delegate, many of the conventions of his party. He is popular, and possesses the confidence of the general public, and is especially esteemed by his extensive clientage.

Mr. Satterwhite is a close reasoner, and possesses a strong, well-trained, judicial mind, and though yet a young man, many prominent business men of Los Angeles show their confidence in his judgment by consulting him.

He married, in October, 1897, and has one child.

SAMUEL B. RUSSELL.

Samuel B. Russell was born in Leavenworth, Kansas, on the 27th day of May, 1870, and is one of a family of five children. His parents

emigrated to California when he was but five years of age. He attended the public schools in the country districts until, at the age of thirteen, stern necessity compelled him to take up his end of the task, and assume a portion of the responsibility of providing for the welfare of those who were near and dear to him. He engaged in mechanical pursuits, and at the age of eighteen, impelled by a thirst for knowledge and a determination to improve his condition, went to San Francisco, where

he is now located. Here the evening schools and accessible libraries claimed his attention when working hours were over. Choosing the law as a profession, he studied and has been admitted to practice by the Supreme Court of the State of California. He is a member of the Independent Order of Odd Fellows, the Improved Order of Red Men, and the Royal Arcanum. He has the virtues of honesty, fidelity and candor, and is enjoying success in the law.

JAMES G. SCARBOROUGH.

Mr. Scarborough was born in Louisiana, in 1862. His father, who was a planter, moved to Texas in 1868, taking with him his son, who was educated at Baylor University, at Waco, Texas, and was finally graduated at Howard College, Marion, Ala. Mr. Scarborough was valedictorian, taking first honors in a class of eighty-three. He commenced reading law at Waco, Texas, in the office of Anderson & Flint. He was admitted to practice by the Supreme Court of Texas in February, 1885. He immediately came to California, settling at Los Angeles, and beginning the practice of law at that place. After some years, he removed to Santa Ana, Orange county, where he passed an active period of his life, covering six years. He was the attorney for the Santa Ana and Newport Railway Company, and other corporations, and served a term as district attorney of Orange county. Returning to Los Angeles, he has since resided and practiced there, being always one of the busiest men at the bar. His clients are principally corporations.

Mr. Scarborough is married, and has one child. He is prominent in the Knights of Pythias, being colonel of the Uniform Rank. He commanded the company that went to Detroit to the national encampment, and which won the first prize for drill. On that occasion Colonel Scarborough was awarded the medal for the best commanding officer.

OWEN D. RICHARDSON.

Owen D. Richardson was born in Evansville, Indiana, December 18, 1868. He was graduated at the University of Indiana in 1893, with the degree of A. B., and, coming to California in that year, was awarded the degree of A. M. at Leland Stanford Junior University, in 1894. The following two years he spent at the law school of Cornell University, Ithaca, New York, graduating in 1896, with the degree of LL. B. Returning to California in the same year, he entered upon the practice of law in San Jose, where he has since resided.

He was a candidate for the assembly in 1898, on the Democratic ticket, from the Fifty-fifth assembly district, but was defeated, although he received more than his party vote. In 1900 he was elected city justice of the peace of the city of San Jose by a majority of 800, being the only Democratic local candidate that was successful. He is a popular man, and ambitious. He is conducting his present office with ability and honor, and success will attend him through life.

LAWRENCE SCHILLIG

Lawrence Schillig was born in Sutter county, California, August 13, 1869, and grew up to manhood in that county, on his parents'

Frank H. Short

farm, attending the public schools of the neighborhood. At the age of twenty he was graduated from Pierce Christian College, with the degree of B. S. In the fall of the same year (1889) he entered Hastings' College of the Law, and took the three years' course, graduating in June, 1892, with the degree of LL. B. Immediately thereafter he was admitted to practice by the Supreme Court, and has ever since been engaged in a general law practice in his native county, with his office at Yuba City.

Mr. Schillig was elected to the assembly in November, 1900, and served at the legislative session of 1901, being one of the most active and influential members of that body.

FRANK H. SHORT.

This long-prominent lawyer of Fresno, known all over the State, was born in Shelby county, Missouri, on September 12, 1862. He did not take any university or law school course, but prepared for the profession in the law office of his uncle, the Hon. J. F. Wharton, who was practicing law in Fresno. In 1887 he was admitted to practice in Fresno, and in 1889 was admitted in the Supreme Court, and later in the Federal courts.

Mr. Short has enjoyed a very good practice, and especially for the last seven or eight years. When still young at the bar he was in most of the important criminal cases tried in Fresno county. Among the more notable were those of the people against J. D. Smith for the killing of Percy Williams. He was associated with Grove L. Johnson in the prosecution of the case of the People against Richard Heath for the killing of L. B. McWhirter. He also defended Prof. William A. Sanders, charged with forgery, and accused of murdering William Wootton. The case of forgery was tried four times, the first trial resulting in a disagreement; the second in a conviction, and in an appeal to the Supreme Court, where the conviction was reversed. This case is reported in 114 California, page 216, and is one of the most extraordinary cases in the books. After its reversal in the Supreme Court, the case was retried, and the jury again disagreed; upon the fourth trial, Judge Carroll Cook of San Francisco, presiding, the defendant was convicted, and from this conviction no appeal was taken; it not being thought possible without the reappearance of William Wootton or the appearance of the alleged John Knausch and Mr. Graves, that the case could be successfully tried. Neither Wootton nor Graves nor Knausch has ever been heard from, and the case remains a profound mystery, the evidence being circumstantial as to the killing of Wootton by Sanders.

More recently, Mr. Short has been connected with other litigation representing the Fresno Canal and Irrigation Company, Miller and Lux and other large irrigators in the San Joaquin Valley. He has been engaged in a considerable number of cases involving the right to water for irrigation purposes, and in the case of the Fresno Canal and Irrigation Company against Park, wherein the Supreme Court has recently decided that water right contracts for a given price, conveying the right for a definite period, were constitutional and valid. The defendants contended under the law that the constitution prohibited such contracts, and required all rates to be fixed by the boards of supervisors. Mr. Short was associated with Judge John Garber in sustaining the validity of the contracts. The case was considered one of very great importance, and some five or six briefs were filed by prominent attorneys throughout the State, appearing *amicus curiae* most of them on behalf of the contention of the defendants. Mr. Short is also at present associated with the attorney-general in prosecuting the case against the Southern Pacific Company for raising its rates without the permission of the board of railroad commissioners, when it had reduced them throughout the southern part of the State to meet the competition of the San Francisco and San Joaquin Valley Railroad. In this case before the railroad commissioners, the contention of the railroad company was overruled, and it was ordered to restore the reduced rates. Before Judge Bahrs in San Francisco this order was affirmed and the railroad company enjoined from violating the order of the commission. The railroad company appealed to the Supreme Court and the matter has been there very recently submitted for final decision. The matter is of the greatest public importance, involving the question of the jurisdiction of the railroad commission and their right to hear a final determination of matters between the public and the railroad company touching its public duties.

Mr. Short has also recently been engaged in the litigation between mineral locators and the scrippers concerning title to petroleum lands, and is representing the mineral locators before the Interior Department and in the Federal courts. The litigation involves property of the value of many millions of dollars, and thus far the mineral locators have been successful.

Mr. Short was a delegate to the Republican National convention in 1896. He has attended many State conventions, and done much campaign work for the Republican party. He married in Fresno, at the age of twenty-four, his first wife having died some years ago. He married his present wife in 1897, and has two children. His wife's maiden name was Nellie Curtis, and she is a sister of J. W. Curtis, a well-known attorney of San Bernardino, and is a niece of William S. Holman, for forty years a member of congress from Indiana.

P. L. SCHLOTTERBACK.

P. L. Schlotterback was born at Ligonier Noble county, Indiana, October 14, 1864, while his father was in active service with the Union army. When the war was over the father returned, and the family remained on the farm until 1879, when they moved into Western

Texas. A few months later unfortunate business transactions resulted in the loss to the father of all his property. Then, at the age of fifteen, Mr. Schlotterback was thrown upon his own resources, not only maintaining himself, but assisting in the support of his family also. In 1881 he became an apprentice in pharmacy, in which he was rapidly promoted until he stood at the head of his profession. After continuing in the practice of pharmacy for a few years, he successfully engaged in land speculation in Western Texas. In 1883 he came to California on a pleasure trip, on a return ticket, the return part of which he never used. Arriving in Santa Rosa he again engaged in the practice of pharmacy, devoting his spare time to the reading of law. In 1898 Mr. Schlotterback creditably passed the examinations for admission to practice before the Supreme Court of California. He soon engaged in the practice of law in Santa Rosa by becoming a member of the firm of Schlotterback & Lea, of which firm he is still a partner.

HENRY C. SCHAERTZER.

Henry C. Schaertzer was born in San Francisco, May 3, 1869, and was educated in the common schools of that city. He attended the lectures at Hastings College of the Law for two years, and was admitted to practice by the Supreme Court of the State on May 5, 1900. He was also admitted to practice in the United States Circuit Court of Appeals, the United States Circuit Court and the United States District Court.

Mr. Schaertzer devotes his time exclusively to his profession, and has not held a public or political office. He is married, and has two children. He is at present local counsel for a number of New York corporations, and practices largely in the United States courts. He has been prominent in fraternal organizations, but at present has little time to devote to such affairs.

A. E. SHAW.

A. E. Shaw was born near Sacramento city, California, on July 31, 1867. His father, A. D. Shaw, who had been a practicing attorney in the East, was then engaged in farming.

Mr. Shaw's boyhood was cast in Sacramento, Monterey and Alameda counties. His education was received in the public schools of Oakland. He was graduated from the Oakland High School, and in 1891 from the State

University, with the degree of A. B. He studied law in the office of Fox & Kellogg, in San Francisco, and was admitted to the bar by the State Supreme Court in July, 1892. He has practiced in San Francisco ever since. His only partnership was in 1893-94, with Frederic R. King, son of Thomas Starr King.

Mr. Shaw had his first case in the Supreme Court of the United States in August, 1895, when he was twenty-eight years old.

FREDERIC W. STEARNS.

Frederic W. Stearns was born in Chicago, Illinois, December 6, 1867. He was graduated from the University of Wisconsin in the modern classical course in 1889, securing the B. L. degree. He was graduated from the law department of the same university in 1891, taking the full course, and also working in the office of one of the leading lawyers of the State while attending the law school. He located in San Diego, California, in the spring of 1892. In 1894 he entered into partnership with James E. Wadham, under the firm name of Wadham & Stearns. This partnership continued until 1898.

In 1899 the firm of Stearns & Sweet, consisting of Frederic W. Stearns and A. H. Sweet was established. It has been connected with most of the irrigation district litigation in San Diego county, representing the bondholders of the Escondido, Linda Vista and Jamacha irrigation districts. The firm represented such bondholders in the case of the

Samuel M. Shortridge

People vs. Linda Vista Irrigation District, one of the most important irrigation district cases, being an action of quo warranto brought by the people of the State of California to dissolve the district, and involving the validity and effect of the confirmation proceedings had under the act of the legislature passed in 1889. The case was decided both by the lower court and by the Supreme Court in favor of the district. The firm has made a specialty of bond and corporation law.

SAMUEL M. SHORTRIDGE.

Mr. Shortridge has been at the bar only fifteen years, but it seems much longer. He became prominent very soon after his admission, and has been familiar to the people of the State for a greater period as an eloquent public speaker..

He was born in Mt. Pleasant, Henry county, Iowa, on the 3rd of August, 1861. His remote ancestors lived in Scotland and the north of Ireland. Some four generations back, the family was established in Kentucky, where it produced several great lawyers and preachers. Mr. Shortridge's father, Elias W. Shortridge, was born in Indiana, his mother also. The father prepared himself for the bar in company with Oliver P. Morton, but, without entering upon the profession, turned to the pulpit, and became a clergyman of the "Christian" denomination, in which President Garfield was prominent. He was a man of deep and cultured mind.

In Kentucky, the Shortridges, like the family of Abraham Lincoln, intermarried with the family of Daniel Boone. The branch that went south adorned the history of Alabama with distinguished names. As late as the year 1855 the strong mentality of the race was exemplified in Hon. George D. Shortridge, a man of great learning, and one of the Circuit Judges of that State. But the most commanding name in this branch of the family was that of Eli Shortridge, father of George D. Eli Shortridge was also a Circuit Judge in Alabama, but had won an enviable reputation as a lawyer and orator in Kentucky, where he was born. In a volume on the noted men of Alabama, written by Hon. William Garrett, who had been secretary of state, is a very entertaining notice of Eli Shortridge. Mr. Garrett says:

"His addresses to the jury, while at the bar as an advocate, were models of beauty and eloquence, so pronounced by competent men who have heard him. He had a peculiar softness and euphony in his voice which exerted a charm on the listeners. Nothing could be more captivating. It was like the tones of a parlor organ, rich in melody and gushing out in a perpetual concord of sweet sounds.

"His style was not less beautiful in purity of diction, and it seemed as if he always held a check on himself, as if to curb a vivid imagination. There were occasions, however, when he soared beyond his restraint though never to the height of his capacity."

Mr. Shortridge's father removed with his whole family to Oregon in the year 1874, and came with them to California in 1876, settling at San Jose. At that place Samuel graduated from the High School in 1879, delivering, at the graduation exercises, the valedictory address. Subsequently he received a first-grade State certificate, and went to Napa county, where he taught school for four years, at different places.

During this period of Mr. Shortridge's career his great mental activity was evidenced by lectures to his schools on instructive themes, and by public addresses and contributions to the press on questions of popular concern.

His experience as a teacher and principal in the public schools confirmed the high estimate he had been taught to place upon our common school system.

After coming to this State and before going to school at San Jose, young Shortridge and his brother, Charles M., worked for some time as common miners, in the mines of Nevada county. Samuel had the law for his goal, and he kept his eyes fixed there through a boyhood and early manhood of toil. His opportunity came in the year 1883. He was twenty-two. Having read law books with increasing interest in rare moments of leisure, he resigned his position as principal of the public schools of St. Helena, Napa county, and moving to San Francisco, now began the study with system and devotion.

He was admitted to practice by the Supreme Court in the month of May, 1885.

It was in the presidential campaign of 1884 that he became known to the people of the whole State as an orator, while canvassing in the support of James G. Blaine.

The comparatively short period that has elapsed since Mr. Shortridge came to the bar, has been long enough to realize to him his boyhood hopes. He has displayed high ability in both civil and criminal departments of the practice. His commanding form is sustained by robust physical strength, and he is capable of great endurance, both of mind and body. His ambition is strong, his aims are high. He has an enthusiastic love for the profession. And his zeal is not that ardor of mind that burns or cools with circumstances, but has its springs in a healthy intelligence. He has the intellectual qualities that are masters of victory.

As a public speaker, Mr. Shortridge is earnest, but not excitable, fervid but not fiery. His expression is careful, his gesture graceful, with a commanding sweep of arm. His voice is strong, full and unfailing, of pleasing quality, and thunders or softens at his will.

He has been a close student of rhetoric, but has sought to learn oratory and acquire the art of eloquence from the great originals—the perennial fountains—Demosthenes, Cicero, Burke, Chatham, Webster, and Clay, regarding them as the masters, and an intimate acquaintance with them as essential to a kindred excellence.

Since coming to the bar Mr. Shortridge has been orator of the day on many historical occasions. His Memorial Day orations and Fourth of July addresses, delivered in the

principal cities of California, have been widely circulated, and have earned for him a reputation for scholarship and eloquence which may ripen into fame.

Born and reared a Republican, he has rendered yeoman service to his party, canvassing the State in its interest in nine successive campaigns. He was one of the Republican presidential electors in 1888, and again in 1900. In the latter campaign he received the largest vote on his ticket, and the largest ever cast for a candidate in California, and was chosen by his fellow-electors to carry the vote of his State to Washington. The address delivered by Mr. Shortridge before the Republican State convention, at Santa Cruz, in September, 1900, was issued as a campaign document and won great praise.

Having studied Chinese history, the Chinese race and characteristics, he early opposed Chinese immigration on the broad and justifiable ground of self-preservation, the first law of nature, applicable alike to nations and to individuals. He elaborated his views in a speech at Metropolitan Temple, San Francisco, in 1887, when he used these words:

"A total abrogation of the Chinese treaty and a closing of our doors to further coming of this objectionable race are the only effective methods of grappling with this great and dangerous evil. The State, as such, is powerless; the nation must speak and act. The warfare of Californians against the Chinese is a patriotic and righteous warfare, justified by the principle of self-protection. It is even not unchristian hatred or petty spite which prompts them to act, but an honest conviction that seeks only to protect the interests of American labor.

"We stand here today as the Athenian stood, threatened by the advancing hosts of Syria; as the Roman stood, menaced by Goth and Vandal of the north. Around and about us are the monuments of our Christian and enlightened civilization, the magnificent results of a national progress unparalleled in the history of man, the precious and inestimable blessings of liberty achieved by heroic sacrifice and thus far treasured and preserved by lofty and self-denying patriotism. Shall these blessings be jeopardized and lost forever? Shall these splendid results be sacrificed, these monuments of our liberty, our industry, our progress be ruthlessly overturned? Shall these shrines be desecrated, these oracles of freedom hushed, these free laborers reduced to beggary? It were better that the waves of the ocean overwhelm and swallow us up, it were better that Heaven's lightning smite and wither us than that Chinese slavery should pollute the air of American freedom."

JAMES ROBERT TAPSCOTT.

Mr. Tapscott was born on September 9, 1865, near Staunton, Augusta county, State of Virginia. His parents were James F. Tapscott and Isabella J. Tapscott. They were both cultivated and refined people, whose sterling traits of character and moral worth were recognized by all who knew them. Their chief pride in life was to train and educate their children to be genuine factors for good. They spared no pains nor trouble to impress upon them the importance of observing the Golden Rule. They were both conscientious Christians—practicing, rather than preaching, the doctrines of their faith. The devoted mother (there have been many such in this dear land) was "devotion" itself to her children, and they in turn loved her with an affection too genuine to be hidden; but while this was true, the children were always taught to "respect" her as well as their father.

General Robert D. Lilley, who for many years after the Civil War was connected with Washington and Lee University, was the brother of Mr. Tapscott's mother, and he was one of the most lovable of men. On one occasion General R. E. Lee expressed in writing his estimate of General Lilley's character, and he said:

"I take pleasure in commending him to all as a Christian gentleman and brave soldier. He enjoys the confidence of those who have known him from boyhood and has the admiration of all who are acquainted with his character and conduct in his mature years."

Mr. Tapscott received his education in the Valley of Virginia, where he was raised, and where educational facilities were at that time, and are now, among the very best in the country.

When he finished school, although pleasantly situated, and most devoted to home and home influences, he felt that present pleasures must not interfere with his future welfare and prosperity, and when an opportunity was presented to him to try his fortune amid new scenes, he bid an affectionate farewell to mother and father, and his "Uncle Robert" (who accompanied him to the train) and his boyhood friends, and at the age of eighteen years, crossed the continent and came direct to the Golden Sate. The first winter after he arrived here he spent with relatives and

friends near Colusa, in the Sacramento Valley, and the following spring he went to Red Bluff where he at once entered the law office of Messrs. Chipman and Garter (Gen. N. P. Chipman and Col. Chas. A. Garter) as a law student, and with them pursued his law studies until he was admitted to practice law.

During the month of May, 1889, he accepted an offer to enter into a law partnership with Hon. H. B. Gillis, at Yreka, Siskiyou county, California, and immediately thereafter removed to that place and they established the law firm of "Gillis & Tapscott," and the firm has continued in existence up to the present time—over eleven years. During this period the firm has maintained its place among the leading law firms in the northern part of California, and has enjoyed a very extensive and successful practice. Throughout this entire time the courts of that section of the State have been kept busy settling the various complications which constantly arise wherever valuable mining properties are being discovered and developed, and this litigation has not been confined to the local courts, but the most important part of it has invariably found its way into the Supreme Court, and not infrequently into the United States Federal Courts, and the Supreme Court reports afford abundant evidence that no law firm in that part of the State has taken a more active part in this litigation, or been more successful therein.

In order to keep abreast of the times the firm has acquired and kept up one of the most valuable law libraries to be found north of Sacramento, and their office facilities are in keeping with their practice.

In politics Mr. Tapscott has never found any satisfactory reason for changing those Jeffersonian principles which he inherited from a long line of Old Virginia ancestors.

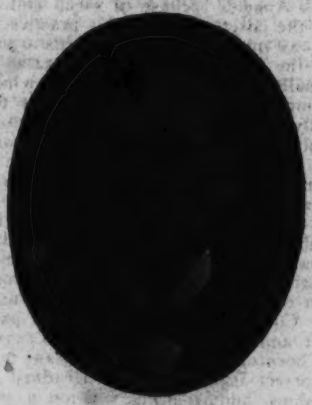
Though a sincere, an avowed and active Democrat and for several years secretary of the Democratic County Central Committee of Siskiyou county, and once elected chairman of that committee, he has never allowed himself to be persuaded into aspiring for any office—though often advised by well-meaning friends to do so. He has usually felt that "office" was a luxury which but few well-established young business men could afford.

He has been more or less prominent in the Masonic fraternity for the past ten years, and values most highly the honors which have been bestowed upon him in that connection.

Mr. Tapscott was most happily married on October 16th, 1889, to Miss Katie Merrill, of Red Bluff, who is a native daughter of California. They have two very bright and entertaining children to bring sunshine to their delightful mountain home—Robert Merrill Tapscott, aged seven years, and Katharine Isabel Tapscott, aged five years. Of all the treasures this rich mountainous gold-bearing section possesses, none are so valuable as these "home treasures," and it would be hard to find anywhere a happier home or one that enjoys in greater measure the good will of the community.

ARTHUR J. THATCHER.

Arthur J. Thatcher was born at Placerville, in this State, in 1864. In 1869 his parents removed to Mendocino county, where they have ever since resided. Mr. Thatcher entered the State University at Berkeley, and was graduated therefrom in the class of 1887. After graduation he went to the Hawaiian Islands, as a teacher in the government schools, and while there married Miss Fannie Low. Returning to Mendocino county, he became editor and part owner of the Ukiah *Republican-Press*. Not finding newspaper work congenial, he sold out his interest in the *Press* and accepted the principalship of the Placerville schools, and later the same position in the Redwood City schools. Having resolved to enter the legal profession, he devoted his spare time



while teaching, to the study of law, and was admitted to practice by the Supreme Court. After admission to the bar, he opened an office at Redwood City. In 1896 he returned to Mendocino county, locating at Ukiah, where he formed a co-partnership with Hon. John W. Johnston, now of Sacramento. This continued until Mr. Johnston's removal from the county, two years later. Mr. Thatcher has always taken an active interest in politics, on the Republican side, being the candidate of that party for district attorney of Mendocino county, in 1898, and chairman of the county central committee in 1900. He is one of the best lawyers in Northern California, and one of the most respected citizens of Ukiah, and his practice is steadily increasing.

T. C. THORNTON.

A very recent accession to the bar of Los Angeles is Colonel T. C. Thornton, who removed to that city from Texas so late as the 15th of July, 1900. He was born in Texas, in 1863, and is a graduate of the Texas University, and practiced law in that state for fifteen years. He is an accomplished lawyer, of fine presence and address, and the most

cheerful temperament, and is one of the men to whom the battle of life seems easy. We had the pleasure of becoming acquainted with him about two months after he had settled down in his California home. We learned enough of him to be fully assured that the following fine words of commendation were not misapplied. They are from the Greenville (Texas), *Morning Herald*.

"The many friends in Hunt county and throughout the state of Colonel T. C. Thornton will regret to learn that he leaves today for Los Angeles, California, where he expects to reside permanently. Colonel Thornton has been a member of the Greenville bar for some ten years, and is an attorney of character and ability. He has enjoyed a lucrative practice here, being retained in many of the most important criminal and civil cases before the courts, and is influenced in leaving Greenville for Los Angeles because of social and family ties at the latter place. In his practice, in his rulings as special judge, and in his arguments before the higher courts of the state he has continually shown his intimate knowledge of the principles of law, and his ability to successfully apply them. Colonel Thornton has not only been a prominent and successful attorney, but he has for years taken an active part in the politics of the state. He served as assistant secretary of state under Governor Culberson, and was later urged by friends throughout the state to become a candidate for lieutenant-governor. He numbers among his personal friends many of the most prominent men in the state, including Supreme and Appellate Court Judges, state officials, past and present, and other leading men of Texas. Colonel Thornton is genial and pleasant in social life, correct in his conduct, steadfast in his friendships, and in every relation a splendid gentleman. He will take with him to his new home the best wishes of his associates at the bar and friends everywhere for a useful and successful life."

WALTER J. TRASK.

This gentleman, the junior member of a leading firm of Los Angeles, has himself taken a place at the very front of the younger bar of the State as a trial lawyer. He was born in Jefferson, Maine, July 6, 1862. His education, after his early boyhood schooling, was received at Nichols' Latin School in Lewiston, Maine, and in Waterville Classical Institute. He read law in the office of Eugene M. Wilson, at Minneapolis, Minnesota, and in that of Warner & Stevens, in the neighboring city of St. Paul, and was admitted to the bar at St. Paul in 1886. He practiced law there in partnership with John A. Lovely, who is now one of the justices of the Supreme Court of Minnesota.

Mr. Trask came to California in 1890, and located at Los Angeles, where he has always since lived and practiced. In the year 1893 he became a partner of the bar leader, John D. Bicknell. Ex-Judge James A. Gibson afterwards joined them, and the firm of Bicknell, Gibson & Trask still continues.

Mr. Trask usually tries the cases of the firm. He has become a skilled and well-equipped lawyer, generally, and has had large and special experience in transportation and oil cases.

JOHN R. TYRRELL.

Hon. John R. Tyrrell of Grass Valley county, State senator of the counties of Nevada, Sierra and Plumas, was born in the city of Hale, England, January 30, 1868. He was only a year old when brought to California, and his entire life since has been passed in the always thriving city which is now his home, excepting a few years of his early manhood, spent in the employ of one of the iron works of San Francisco. Before such employment he had attended for some years the common schools of Grass Valley. From the iron works he went back to that city, and opened a feed store, and, while conducting that business, prepared for the bar by private study of the proper books. He had begun the study of law in San Francisco. After a while he sold out his

store and devoted himself entirely to study. He was elected a justice of the peace. Being admitted to the bar, he resigned his office, and entered on the practice of law in Grass Valley.

In 1900 Mr. Tyrrell was nominated by the Republican senatorial convention of Nevada, Sierra and Plumas counties for joint senator from those counties. Before his nomination, when his candidacy was first announced, the Nevada City *Transcript* endorsed him in a hearty editorial, from which the following is quoted:

"Upon the breaking out of the Spanish War he was first lieutenant of Company I, N. G. C., and when that company was called out he entered the service of the United States as first lieutenant of Company I, of the Eighth Regiment, U. S. Volunteers, and remained in the service until mustered out at Vancouver Barracks at the close of the war. All of his comrades are enthusiastic about his candidacy

for the senate, for, as they say, 'he treated them as an equal and paid especial attention to their every want.' He is at present a member of the board of education of the city of Grass Valley. In every instance where he has been a candidate, the vote has shown the confidence and high esteem in which he was held in that community. He was appointed by the court to defend E. H. Moore, the murderer of Nigntwatchman William Kilroy, when everyone thought that there was no chance of saving him from the gallows, but by untiring work and shrewdness he showed his legal ability when he succeeded in getting a verdict of imprisonment for life. In this case alone he demonstrated that he was a lawyer of great ability. Mr. Tyrrell has been admitted to practice by the Supreme Court of this State, and the United States District Court.

"If the people of the joint senatorial district should elect Mr. Tyrrell to represent them in the State senate, they will have a senator who understands their needs as well as any one in the district, and he will not cease to labor in their behalf from the day he takes the seat until the expiration of his term. Mr. Tyrrell is one of the most popular young men in the county, and his nomination would be equivalent to an election."

It so transpired. The nominee was elected by a larger majority than had ever been received by a candidate for that office, and he is serving in the senate, with much credit as this sketch is being written (February, 1901). Representing a rich mining district of great area, he is working energetically to secure legislation in the interest of his constituency. He is personally interested also, being a director in several mining corporations, and owning three-fourths of the Lincoln gold mine, in his own county.

The Senator is married and has four bright boys. He has a good law practice at Grass Valley.

WILLIAM J. VARIEL.

This gentleman is a younger brother of Hon. R. H. F. Variel, whose career has already been noticed. He was born in Camptonville, Yuba county, Cal., June 2, 1861. His father and mother came to this State from Indiana in 1852, crossing the plains with an emigrant train. He attended the public school at Camptonville. There were accomplished and faithful teachers, even at that early period, and young Variel had the instruction in his village school of Hon. Samuel T. Black, now president of the Normal School at San Diego; Hon. C. W. Cross, now a prominent lawyer of San Francisco, who is also noticed in this History; Frank H. Titus, who became eminent in surgery, and is now with the army in the Philippines; and Hon. E. A. Davis, now Superior Judge of Mr. Variel's native county, (q. v.)

In 1877 our young friend while on a visit to his brother at Quincy, Plumas county, concluded to transfer his scholastic allegiance to the Quincy school. His father was a carpenter and millwright, and he helped him in his work in periods of school vacation. He prepared himself for examination as a teacher in the public schools, and on May 27, 1880, he passed the examination and received a second grade teacher's certificate. He found a school at once, and taught for the following three years at Nelson Point, in the summer months, and at Diamond Springs during two winters.

His mind was turned toward the medical profession, and he gave much study during his leisure hours, to anatomy and physiology. In 1883 he was about to take a course at a medical college, but his brother, who was then in San Francisco on a visit, advised him to enter the State University, which advice he took. Entering with the freshman class in August, 1883, he was admitted to a partial course in the college of chemistry. The funds which he had saved from his salary as teacher were exhausted before the end of the first six months, and there were three and a half years of the college course before him. By hard work at various kinds of employment, he earned sufficient means for his maintenance while he took the full course, and he was graduated in 1888 with the degree of B. S.

He had, on turning away from medicine, determined to become a lawyer. He was assistant librarian in the university for two years, but on graduating resigned the position, and went back to Plumas county, where he resumed teaching school and followed it for two years more. He also for a while was editor and manager of the *Plumas National*, at Quincy, and all the time which could be spared from his regular duties was devoted to the diligent study of law.

In the spring of 1891 he had just finished teaching a term of school near Quincy and presented himself before the Superior Court for admission to the bar. An important murder case was in progress with which nearly all the attorneys of the county were connected in one way or another. Judge Clough, in the afternoon of April 29th, kindly adjourned court a little early so as to permit the examination of the applicant. The jury was excused, the alleged murderer taken back to his cell, and young Variel was brought into the court room, which was crowded with spectators and lawyers. The bench and bar all questioned, passing him around from one to an-

other. They all highly enjoyed the occasion, but the candidate stood up bravely under the fire. Judge Clough, Judge Goodwin, Judge E. T. Hogan, Judge C. E. McLaughlin, Hon. U. S. Webb, district attorney, Hon. W. W. Kellogg and Hon. Wm. N. Goodwin, each took a hand in trying to find out what the trembling aspirant didn't know about law, but after the lapse of an hour, which must have seemed an age, Judge Goodwin moved the admission of the applicant.

Mr. Variel, a few days after, May 4, 1891, presented himself before the Supreme Court then sitting at Sacramento, and was admitted to practice before that court, after another but not more plenary examination. He at once went to Los Angeles and took office with his brother, R. H. F. Variel, who had been practicing at that city for some time.

Mr. Variel belongs to the Native Sons and has been a Mason ever since he was old enough to join the order. He is an active partisan in politics, on the Republican side. As a lawyer he is industrious, able and successful. He has the esteem of the bench, the good will of his brethren of the bar, and is universally respected as a citizen.

MARVIN T. VAUGHAN.

Mr. Vaughan was born in Healdsburg, Sonoma county, California. He is a member of a family widely known for firmness and integrity. In 1896 he was graduated from Pacific Methodist College. In 1897 he was admitted to the bar of this State, after examination by the Supreme Court and immediately commenced practice of law in Santa Rosa. In 1898 Mr. Vaughan married Miss Essie Mae Austin, daughter of Colonel J. S. Austin, under-sheriff of Sonoma county.

A Santa Rosa editor lately wrote of Mr. Vaughan: "He is a good student and an attorney of ability. He is a young man of high standing and has an honorable ambition to rise in his profession. He belongs to that class of men who deserve to succeed."

In April, 1900, Mr. Vaughan was elected by a very large majority over a popular and able lawyer, city attorney of Santa Rosa, which position he is now occupying.

SHIRLEY C. WARD.

Shirley C. Ward is one of the younger members of the bar of Los Angeles, having been born near Nashville, Tennnessee, in 1861. He is the son of Mr. John Shirley Ward, a retired lawyer and editor of that city, and is descended on his mother's side from the Robertsons of Tennessee, who were among the pioneers and commonwealth builders of the old "Volunteer" state. Until his twelfth year he attended the city schools of Nashville, and the Montgomery Bell Academy, a preparatory school of the State University. Few boys of that age ever had a more thorough foundation laid for a broad and classical education, but it became necessary for him to seek a milder climate, and so his father settled in Southern California, and established a large alfalfa and fruit ranch, that his son might get plenty of fresh air and take all his physical culture at the end of a pitchfork. He received his legal education at the Hastings Law School, under the celebrated Professor Pomeroy, who predicted in a letter to his father, when he was finishing his course, "that if he has health, there is no place at the bar or on the bench that he will not reach."

In 1885 he hung out his shingle in a little inside office of the Temple Block. Mr. Ward's father was at that time the Indian commissioner for the Mission Indians, and a controversy arose as to the ownership of certain forfeited desert land sections, within the exterior lines of the Indian reservation, the commissioner contending that the forfeiture inured to the Indians, and not to the whites. The case was carried up to the Commissioner of the Land Office, and then appealed to the Sec-

retary of the Interior. His father then told his briefless son that he did not have authority to pay an attorney to make a brief in behalf of the Indians, but if his son wished to try the experiment of "casting bread upon the waters," he might file an argument, and he would submit it to the secretary, the Hon. L. Q. C. Lamar. This brief won the case for the Indians, and it fell into the hands of Attorney-General Garland, and very soon the latter needed an attorney to represent the government at San Francisco in the Muscupiabe grant case. Mr. Ward was appointed by a telegraphic order, after having written to the department that he could not win the case, as the law was against the government's claim. He lost the case, but he soon received a check for $2500. This led to his appointment, on behalf of the Indians, in the San Jacinto Indian land case, which he carried to the Supreme Court of the State, winning it for the Indians and receiving therefor another check for $2500. This put him on high vantage ground with the Department of Justice, and for several years he was the attorney for the Indians in

many important cases, for which he received not less than $5000, making in the first five years of his practice $10,000—all the result of "bread cast on the waters."

Then came the great corporation case of Woodruff vs. Howes, Bonebrake, Merrill and the Semi-Tropic Company, involving millions of dollars, which he won in the Supreme Court. Then came the First Presbyterian Church case, which gave great scope for a display of legal learning, and brought him face to face with John S. Chapman, the foremost advocate of the Los Angeles bar. The Supreme Court gave him the victory in this case. Then followed the bonds case of the Rialto Irrigation district, which case has been fought with signal ability by both sides, but recently was gained for Mr. Ward's clients.

In the recent "scrippers" cases before the Circuit Court of the United States in Los Angeles, Mr. Ward met in hotly contested battles many of the ablest lawyers in Southern California, but he proved himself a "foeman worthy of their steel." Mr. Ward is now representing these same scrippers before the land department at Washington, and as soon as the cases are settled, by order of the Department of Justice, he will argue before the Supreme Court of the United States on behalf of the Mission Indians, to prevent their ejectment from the homes of their ancestors, on the Downey Ranch, in California.

Mr. Ward has always had able lawyers associated with him in all his great legal contests, but has uniformly written all the briefs, although they have been signed by the other attorneys. It is one of the eccentricities of his mental make-up, that he becomes so saturated with the law of his case, that he cannot help writing it out himself. He has that order of mind that strikes straight to the heart of his subject. He is no placer miner, skimming the mere surface, but thrusts his pick of investigation down to where the gold-laden quartz and oil-sands lie.

Mr. Ward, in 1892, married a daughter of the Hon. Jefferson Chandler, and has an interesting family of three boys and a daughter. His family is his paradise, where he forgets to be the lawyer and becomes the happy husband and father.

JOHN MADISON WALTHALL.

John Madison Walthall was born near Stockton, California, on December 31st, 1871. His father, Madison Walthall, Jr., was descended from a Virginia family which emigrated to the Old Dominion in early colonial times and has had among its members many men distinguished at the bar, foremost in the group being Henry Clay, and latterly General Edward C. Walthall, C. S. A., afterwards United States senator from Mississippi.

Madison Walthall, Jr., was born in Mississippi, where his family lived for a time, but came to California in 1852 at the request of his father, Madison Walthall, Sr., who, having served as an officer in the Mexican War, became imbued with the pioneer spirit and took up his residence in the far West.

Colonel Madison Walthall was a member of the first legislature of California, which convened at San Jose, and was afterwards appointed collector of the port of Stockton under the administration of President Buchanan. His son, Madison Walthall, Jr., the father of the subject of this sketch, followed the profession of surveying, and during the early history of California made many valuable maps of the country. He combined a rare gift of study with his business abilities and would undoubtedly have attained distinction as a scholar if death had not claimed him while he was still a young man. His widow and children then parted with their San Joaquin home and moved to Stanislaus county.

John Madison Walthall, the only son, was sent at an early age to Lytton Springs, and afterwards to Laurel Hall, while under the direction of Dr. John Gamble, and was graduated there several years later. In 1895 he entered Hastings College of the Law, and during his three years' course, had the benefit of association with his brother-in-law, Judge Edward A. Belcher, with whom he lived, and of William S. Barnes, who was then district attorney of San Francisco.

In 1898, Mr. Walthall was graduated from the law college named with the degree of B. L. He immediately began the practice of law at Modesto. In November of that year, having been nominated to the office of district attorney by the Republican party, he was elected by a large majority, and in January, 1899, assumed the duties of his office, being the first Republican district attorney to hold office in Stanislaus county.

M. H. WASCERWITZ.

Morris Herman Wascerwitz was born on February 22nd, 1865, in the City of New York.

In 1877, at the age of twelve years, having been graduated from grammar school No. 24, New York city, he came to California.

In 1888, he was graduated with honors from

the Hastings College of the Law, and has since then been continuously practicing his profession in San Francisco.

He has been connected with important litigation, and is a very successful practitioner.

J. R. WELCH.

This gentleman has lately been brought into prominence by being employed by the organized depositors of the wrecked Union Savings Bank of San Jose. He represents more than nine hundred depositors, whose claims amount to about $400,000. He has made many successful fights for his clients, and in a year and a half has collected directly from the stockholders about forty per cent upon the deposit demands in his hands. This large percentage paid on judgments against the stockholders, practically secures to those depositors repre-

sented by him the full amount of their claims. Soon after the bank went into liquidation, the stockholder directors levied an assessment, and thereafter advertised the stock for sale. On behalf of his clients, Mr. Welch succeeded in enjoining the directors from the sale of the worthless stock. He alleged and showed that it was the intention of the stockholders to not only relieve themselves from the payment of the ten-dollar assessment, but from the $700,000 on unpaid subscriptions. This victory compelled the bank to proceed in the usual way to liquidate its affairs.

Born in Illinois, Mr. Welch has lived in several states, but has been a resident of California since 1881. He obtained a college education alone and unaided at the University of the Pacific. Graduating in 1887, he immediately began the study of the law, and in eight months thereafter was admitted to practice by the Supreme Court of the State. He holds a certificate from the United States District Court for the northern district of California.

In January, 1894, he was elected city attorney of San Jose, and held this office for three years, when he resigned. During his administration he was a successful prosecutor of violators of city ordinances. The High School building was erected during the time he was city attorney, on a portion of what is known as Washington, or Normal, Square. He was largely instrumental in getting a bill through the State legislature permitting the building to be erected thereon, and obtained from the State for the city a deed to about one-fourth of this large square. He prepared all the proceedings in the bond issue of $115,000 for the erection of the High School building, sewers and other municipal improvements. The proceedings were reviewed by Judge Dillon of New York, and pronounced by that world-wide authority on municipal corporations, accurate and legal. The mayor and certain members of the council insisted on the city attorney making the bonds payable in "gold coin," but Mr. Welch persisted in following the language of the law, and made them payable in "gold coin or legal money of the United States." Hence his proceedings were pronounced correct, while the Supreme Court has decided other issues of bonds of other cities illegal when they were made payable in gold coin only. Also, the city of San Jose, while the subject of this sketch was city attorney, prepared and adopted a constitutional freeholders' charter. In the adoption of this charter Mr. Welch took an active part, being invited by the freeholders to meet with them in its preparation. However, his best services were rendered the city in a series of opinions on the interpretation of the charter, after its adoption. These opinions were necessary in order to put the city government in full operation under its new organic law. It is said that not one of these opinions has been overruled by the courts. For the last year and a half he has devoted nearly his entire time and energy to the so-called bank cases, but before that time he was engaged in other important litigation.

JOHN J. WELLS.

This gentleman was born in the northern part of Idaho, on the 10th of September, 1867. His father was engaged in mercantile pursuits. In the following year the family removed to Tehama county, Cal., where they have since resided. Mr. Wells was graduated from the grammar school at Red Bluff at the age of thirteen. He shortly afterward entered the office of the Red Bluff *Tocsin*, learned the printing trade, and worked thereat until 1889. He then took up typewriting with N. H. Peterson, official court reporter. In 1890 he became clerk in the law office of Gen. N. P. Chipman at Red Bluff. He was admitted to the bar of the Superior Court of Tehama county in 1892; and to the bar of the Supreme Court in 1897.

In the last year General Chipman retired from practice, and Mr. Wells kept his offices and succeeded to his business.

Mr. Wells is attorney for the Bank of Tehama County, the Herbert Kraft Company Bank, and several other corporations. He is active in politics, a Democrat, but has never

been a candidate for office. He has been a prominent Odd Fellow for many years. He is an earnest worker in his profession, and has achieved success without the aid of oratory; caring nothing for gallery favor. Mr. Wells married in 1895, Miss Lulu Law, of Sonoma, and has one child, a daughter.

BERTIN A. WEYL.

Bertin A. Weyl is a native of San Francisco and has made that place his residence during the twenty-four years of his life.

He was educated in the public schools of his birthplace, and was graduated from the San Francisco boys' high school. Thereafter he

attended the University of California at Berkeley, and thence he pursued a law course at the Hastings College of the Law.

Early in 1899 the degree of bachelor of law was conferred upon him, and he was admitted to practice, whereupon he entered into a general practice of law in his native city.

CURTIS D. WILBUR.

Curtis Dwight Wilbur was born in Boonesboro, Iowa, in 1867. He received his early education in the common schools of that state, and upon removing to Dakota in 1882, two years later, he received the coveted appointment to represent that territory in the United States Naval Academy at Annapolis. He was at that institution three years with the hero of the Merrimac. Mr. Wilbur graduated in 1888, and Lieutenant Hobson one year later. During the same time Admiral Sampson was the superintendent of the school and Captain Sigsbee one of the heads of department. At this school Mr. Wilbur stood close to the top of all his classes, being entitled for one year to wear the gold star on his coat collar, as a token of having passed that period with distinction, and was finally graduated with credit, third in his class. The writer of this has on several occasions noted the diploma received from this institution, which hangs in Mr. Wilbur's office, and remarked upon the names of the famous naval heroes that are signed to it.

Upon coming to Los Angeles in September, 1888, Mr. Wilbur taught mathematics in the McPherron Academy, studying law at night. He was admitted to the bar in 1890, and has since been successfully practicing in Los Angeles.

Mr. Wilbur is now chief deputy district attorney of Los Angeles county, under Hon. James C. Rives. He entered on the duties of this office in January, 1899. Quite recently, when Mr. Wilbur was the subject of conversation between Mr. Rives and the editor of

this History, the worthy district attorney remarked: "He is honest by instinct and education. He is possessed of a splendid judicial mind. As chief deputy district attorney he has attended to the civil matters of the county, to the great satisfaction of his principal and the interest of the county. Few men are so well-equipped for a successful career as a lawyer."

EDWIN A. WILCOX.

Edwin A. Wilcox was born at Fort Wayne, Indiana, March 12, 1868, of American parents. He came to California in 1869, and has resided at San Jose since 1874. He received his education in the public schools of San Jose, and the University of the Pacific, taking the degree of A. B., from the latter institution in 1890. He studied law at the University of Michigan, where he took the degree of LL. B. in 1893. Beginning the practice of law at San Jose, in the fall of 1893, Mr. Wilcox was associated with D. M. Delmas and A. H. Jarman in the trial of the slander case of J. P. Jarman vs. James W. Rea, and also on the appeal by the defendant to the Supreme Court. He was also attorney for the Home of Benevolence, of San Jose in the will contest in the estate of George H. Parker, deceased.

H. E. WILCOX.

H. E. Wilcox was born in Solano county, California. His father, Harvey Wilcox, was a pioneer and one of the founders of the town of Maine Prairie, in that county, a large shipping point for the products of the western part of the Sacramento valley in the days before the railroad. H. E. Wilcox attended the public schools, and afterwards Santa Clara College, from which institution he graduated in 1880. He entered upon the study of the law at San Jose, first, and in the office of his brother, Charles F. Wilcox, and then with B. P. Rankin and L. D. McKisick, the latter of whom afterwards removed to San Francisco. Mr. Wilcox was admitted to the bar in January, 1883, and after serving a period as court deputy in the county clerk's office of Santa Clara county, he commenced the practice of his profession. He has resided at San Jose for over twenty years, and is at present associated with D. M. Burnett, grandson of the first Governor of California. The firm of H. E. Wilcox and D. M. Burnett is widely and favorably known, and is legal adviser for the San Jose Safe Deposit, Bank of Savings, and the Commercial bank of Los Gatos, besides representing several large estates and business interests.

GEO. F. WITTER.

Geo. F. Witter, Jr., was born in Grand Rapids, Wisconsin, November 8th, 1863, his father being the Hon. Dr. G. F. Witter, of that place, and his mother, a sister of the Hon. T. G. Phelps, of San Francisco. He obtained his education in the common schools of Grand Rapids, Wisconsin, and completed the course of the Howe High School of that city in June, 1881. He was engaged in attending to general business until January, 1882, when he was appointed nightwatch of the senate of Wisconsin for the session. During the winter and spring of 1882 he attended the Northwestern Business College, of Madison, Wisconsin, and was graduated from that institution with honors. He entered the University of Wisconsin in the fall of 1882 and attended the University for two years, after which time he obtained a first-grade state certificate and was elected principal of the Humbird High School, which position he filled with entire satisfaction, and was highly recommended by the school board for his efficient work. He resumed his course at the University of Wisconsin in the fall of 1885, and being anxious to practically apply himself, completed his course in February, 1887, by substituting the extra work he had done during his attendance, with a recommendation for special honors. At that time he was tendered and accepted the position of principal of the public schools of Merrill, Wisconsin, which he reorganized, and graduated the first class of the Merrill High School in June, 1887, after which he returned and was graduated with his class at the University of Wisconsin. Mr. Witter was re-elected principal of the public schools of Merrill at an advanced salary, but resigned that position and accepted that of principal of the public schools of Marshfield, Wisconsin, for business reasons, where he did excellent work to June, 1888. Having devoted himself to reading law during his spare moments, he entered the law department of the University of Wisconsin and was graduated with the class of 1889. After arranging his business at Grand Rapids, he was professionally employed at Wallace, Idaho, and remained there until the town was consumed by fire in July, 1890, when he returned to Wisconsin, again taking up his business until April, 1892, when he went to California and located at the city of El Paso de Robles, where he has since been in the active practice of the law. While in Wisconsin Mr. Witter was identified with the Wisconsin Cranberry Growers' Association and was interested in that business. He has been prominently identified with the Republican party, his name having been mentioned at different times for Superior Judge, district attorney and member of the assembly for San Luis Obispo county. He held the office of city attorney of the city of El Paso de Robles during the years 1897-98. He married Mary A. Carter, daughter of E. D. Carter, of Humbird, Wisconsin, in January, 1891, and they have three children.

MARSHALL B. WOODWORTH.

Marshall Borel Woodworth was born, December 18, 1869, at Gold Hill, Nevada. He was self-educated. During his childhood he was entirely dependent on the support of his mother, and to assist her he commenced working at eleven years of age. He entered the law office of Milton Andros, San Francisco, in 1882, and was appointed assistant clerk in the United States District Court in 1886. Subsequently he became private secretary to Ogden Hoffman, United States District Judge. When Judge Hoffman died, and Judge Morrow was appointed to succeed him, Mr. Woodworth was retained as the latter's private secretary. When Judge Morrow was appointed United States Circuit Judge, Mr. Woodworth was promoted to the United States Circuit Court secretaryship. He was graduated from Hastings College of the Law in 1894, and was appointed first assistant United States attorney in November, 1898. He has been a contributor to the American Law Review. Owing to his long experience in the Federal courts, he is regarded as one of the leading members of the Federal bar.

Just as this History was being closed, President McKinley appointed Mr. Woodworth to the office of United States attorney for the northern district of California, in place of Mr. Woodworth's chief in that office, Hon. Frank L. Coombs, who had been lately elected to Congress, and the nomination was confirmed by the Senate on the 3d of March, 1901.

LEWIS R. WORKS.

Lewis Reed Works was born December 28th, 1869, at Vevay, Switzerland county, Indiana. He came to California in April, 1883, and since then San Diego has been his home most of the time. He is the eldest son of John D. Works, once Associate Justice of the Supreme Court of this State, and studied law with the firm of Works, Gibson & Titus, a partner-

James L. Gallagher

ship which was formed upon Judge Works' retirement from the supreme bench, between that jurist, James A. Gibson, formerly Supreme Court Commissioner, and Mr. Harry L. Titus, one of the best corporation lawyers in Southern California. Under the guidance of these gentlemen Lewis R. Works obtained his legal education, and on April 4th, 1892, was admitted to practice before the Supreme Court of California. Upon the dissolution of the firm of Works, Gibson & Titus, Mr. Works formed a partnership with his father, and the firm of Works & Works exists today, and is recognized as one of the strongest in the southern portion of the State.

On January 17th, 1894, he married Miss Edna Pierce, the beautiful and accomplished daughter of Hon. William L. Pierce, then one of the judges of the Superior Court of San Diego county, who is now at the bar of San Francisco. This union has been blessed by a son, Pierce Works, born January 2nd, 1896, in San Diego.

At the general election in November, 1898, Lewis R. Works was elected a member of the assembly from the Seventy-ninth district, comprising the city of San Diego. He is the author of the famous "Anti-Cartoon bill," and because of this was caricatured by the newspapers of the State more than any other member of the legislature. He is a Republican in politics, and very popular with his party, but the demands on his time are such that he has declined to again be a candidate for the legislature. He is recognized as one of the ablest of the younger members of the bar, and as a corporation lawyer he has few, if any, equals of his age. He is secretary of the Bar Association of San Diego, and holds the position of exalted ruler of San Diego Lodge, No. 168, of the B. P. O. Elks, the only fraternal society of which he is a member.

JAMES L. GALLAGHER.

James L. Gallagher was born at Brown's Flat, in Tuolumne county, California, on the 25th of April, 1865. He has resided continuously in the city and county of San Francisco since the year 1869. Mr. Gallagher received his education in the public schools of San Francisco, and afterwards became successively a printer and a stenographer, working for over three years as a printer and for about ten years as a stenographer and shorthand reporter. In 1891 Mr. Gallagher was admitted to practice in the Supreme Court of California, and immediately formed a partnership with ex-Judge James G. Maguire, late congressman from the Fourth congressional district, and Democratic candidate for Governor at the election of 1898. In 1893, when Judge Maguire was elected to congress, this partnership was dissolved, and Mr. Gallagher was appointed assistant city and county attorney of the city and county of San Francisco, and served in that position under the Hon. Harry T. Cresswell for over five years. About the middle of 1898 Mr. Cresswell resigned the position of city and county attorney, and Mr. Gallagher was elected by the board of supervisors to fill the vacancy. He held the office of city and county attorney, and ex-officio member of the election commission and the City Hall commission, until the end of the year 1898. Upon his surrendering the office of city and county attorney, Mr. Gallagher formed his present business association with the Hon. James G. Maguire, under the firm name of Maguire & Gallagher.

N. E. WRETMAN.

Niles Emil Wretman, one of the most able and successful practitioners before the bar of Santa Clara county, is younger in years than in honors; being born at Galesburg, Illinois, in 1873. He was left an orphan at the age of two years, and his life up to the age of eighteen was spent on a farm near Andover, Illinois. In January, 1891, he came to California, and in September of that year settled in Santa Clara county. After a course at a business

college at San Jose, he obtained employment as a stenographer, utilizing his leisure moments in acquiring a knowledge of the law. His application had its reward when in 1894 the Supreme Court admitted him to practice before all the courts of the State.

The same pertinacity of pursuit which characterized Mr. Wretman's early studies, was carried into his professional engagements, and has won for him a substantial place among practitioners of the highest standing in the State, and a position of prominence at the bar of his county. Though his most arduous hours are passed in the service of mining corporations, he has figured successfully in many other important litigations. He has lately won distinction by bringing about valuable settlements in the tangled skein involving the affairs of the Union Savings Bank, which failed in 1899. The affairs of this bank involved large interests, and much of the credit of their solution is recognized as due to Mr. Wretman's foresight and address.

He is of Swedish extraction and speaks the Scandinavian languages.

CLINTON L. WHITE.

ARTHUR M. SEYMOUR.

The above are portraits of the members of the firm of White & Seymour, Attorneys at Law, Sacramento, California.

WILLIAM GRANT.

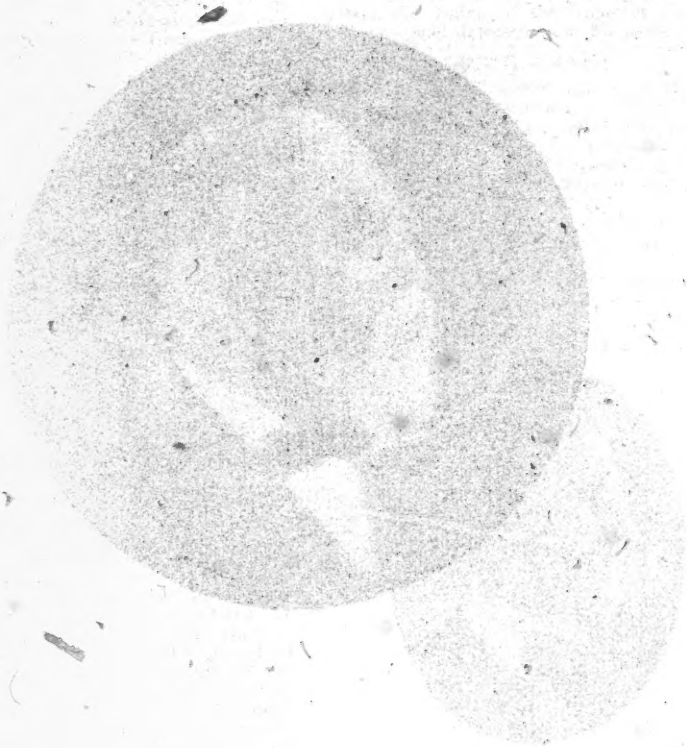
William Grant, a well-known lawyer of San Francisco, was born in that city, September 2, 1862. He is of Irish-Scotch extraction on his father's side, his mother being of a New England family, of English-Scotch descent. His father was a dealer in marble, granite and building stones, in San Francisco, from 1849 to 1868, retiring then from business, and dying in 1880. Mr. Grant was educated in the San Francisco public schools, and was graduated from the State University. He began practice in San Francisco immediately after his admission to the bar of the State Supreme Court, in April, 1884. The prominent law-firm, Mullaney, Grant & Cushing, of which he is a member, has been in existence now many years, and is occupied with a large general practice.

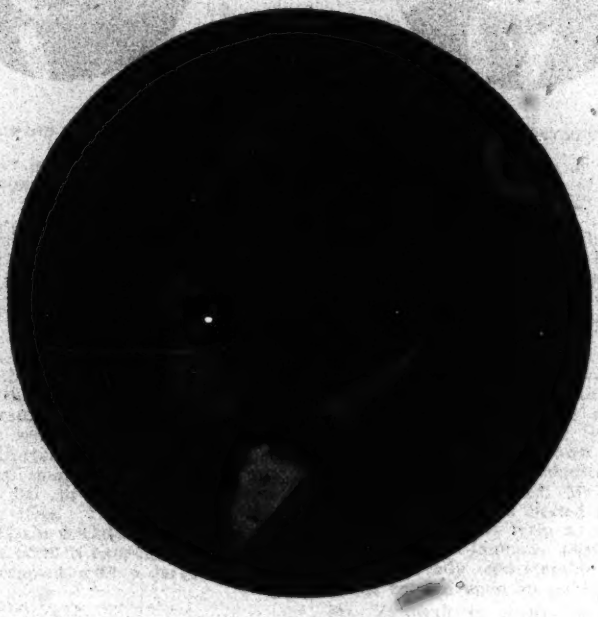
I. G. ZUMWALT.

The district attorney of Colusa county was born in that county on January 24, 1872, a poor farmer's son. His ancestors were of German extraction. His parents removed from Pike county, Missouri, and settled in Colusa county, California, in 1869. They had thirteen children, of whom eleven are living.

Commencing with his fifteenth year, our subject supported himself by working out in summer; earning enough for his education in winter, and so passing through school and college. He was graduated from Bridgeport county school in 1888, and from the Colusa High School in 1890. He continued his studies at Pierce Christian College until he began reading law, which was in September, 1892, in the office of U. W. Brown at Colusa. In October, 1894, he was admitted to the bar, and was associated with Mr. Brown, until he, Mr. Zumwalt, was elected to the office of district attorney, his term as such beginning on the first of January, 1899. His private practice, already considerable, has doubled since he entered upon his public office.

Mr. Zumwalt is always courteous, of industrious habits, and his integrity is acknowledged by all. His professional attention has been specially directed to the civil department, to which he continues devoted. He is a Bryan Democrat, and made a campaign in the great Nebraskan's behalf in the fall of '96.





Henry N. Clement

HENRY N. CLEMENT.

Henry Newell Clement was born May 3, 1841, at Bellefontaine, Logan county, Ohio. His parents removed to Muscatine, Ia., in the same year, and two years later (1843) they located at Eddyville, Iowa, where the years of his boyhood were spent. In 1852 at 11 years of age, he entered the printing office of the Eddyville *Free Press*, where he learned the printer's trade. He followed this alternately with attendance upon school, for twelve years, and by means of which he worked his way through the law department of the University of Michigan from which institution he was graduated with his class in 1866. Returning to his old home at Eddyville, he at once began to practice his profession, and followed it there until 1873. He then spent two years in travel with his family in the Eastern states, and came to California in 1875, and located at San Francisco. He came to join his cousin, R. P. Clement, on the death of the latter's brother, Jabish Clement, and the firm name became R. P. & H. N. Clement. He was thus connected until 1885, when he united with Henry E. Highton, under the firm name of Highton & Clement.

This association continued until 1888, when Mr. Clement became the senior member of the firm of Clement, Cannon, Kline & Stradley. Upon the graduation of his son, Jabish Clement, in 1896, the firm of Henry N. & Jabish Clement was formed, which is now in existence.

He has been identified with much important litigation in California. As attorney for the San Francisco Gas Light Company, he appeared in what were known as the "franchise cases," involving the question of the taxation of franchises. He was also attorney in the Harbor Commision cases, which involved many questions of wharfage, dockage, etc, but more recently in the cases involving the validity of the new charter of San Francisco. A noted international case, known as the Baldwin case, brought to establish a claim of indemnity against the Republic of Mexico for the murder of an American citizen residing in Mexico by Mexicans, was successfully conducted by him through a period of eight years in the state departments of the two governments until a substantial indemnity was recovered for the widow of Mr. Baldwin. His briefs in this case were spoken of with high praise by Secretaries Blaine and Gresham and Judge (then Congressman) Morrow. He is recognized by the members of his profession as a scholarly lawyer and his briefs are marked by logical precision and clearness of statement.

During the early years of his practice in San Francisco, Mr. Clement devoted considerable attention to magazine literature, especially by contributions to the *Argonaut* and *Californian*. His articles on the Chinese question were collected and embodied in the report of the State senate committee,—300,000 copies of which were printed by the State for distribution in the East. He took an active part in oppositng the adoption of the constitution of of taxation inaugurated by that instrument 1870, and his arguments against the system were printed and circulated throughout the State as campaign documents against the adoption of that constitution.

Mr. Clement is an ardent student of municipal government and a prominent advocate of civil service reform. He was elected a member of the last two boards of freeholders of San Francisco, the latter of which framed the charter for San Francisco, which was adopted by the people and ratified by the legislature. He was also a member of the Committee of One Hundred, which was largely instrumental in bringing about the adoption of that charter, an instrument which admittedly embodies the most advanced theories of municipal government that have yet been put into practice.

Mr. Clement was one of the Republican candidates for Judge of the Superior Court in 1898, and was defeated with his party.

GUS. G. GRANT.

Colonel Gus. G. Grant was born at Niles, Alameda county, California, in 1867. He has resided in Stockton since 1882. His early education was received in the public schools of that city, and he was afterwards graduated from the normal and literary department of the Stockton Business College.

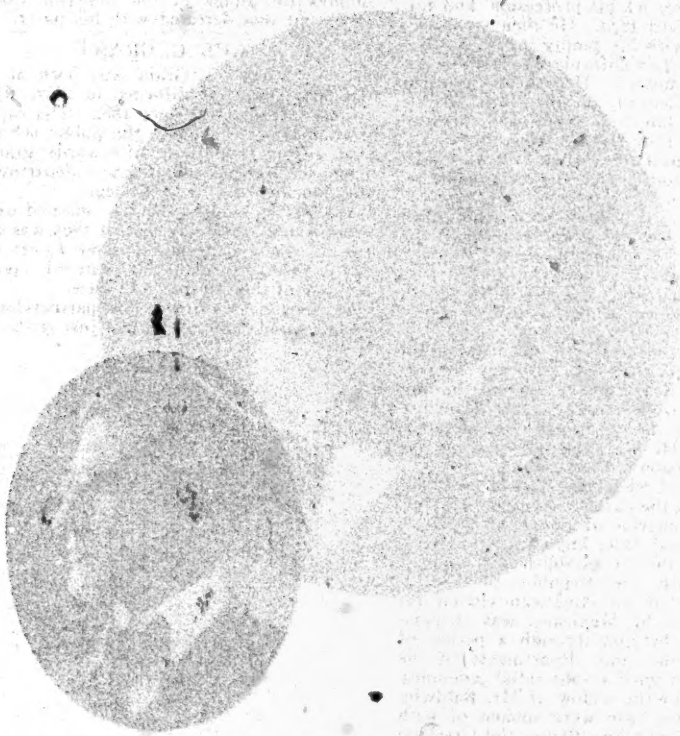
In 1894 he entered the law office of ex-Governor James H. Budd, and in 1895 was admitted to practice in the Supreme Court of the State of California. He entered upon the practice of the profession at once.

In 1897 he formed a law partnership with Judge Ansel Smith, who had just retired from

the bench. The firm of Smith & Grant continued until 1898, when Colonel Grant entered the service of the United States volunteer army as Senior Major of the Sixth California U. S. V. Infantry. His regiment was not sent to Manila, but was distributed about the interior; the greater portion under the command of Colonel Grant, being stationed in command of Fort Point, near San Francisco.

At the close of the war, Colonel Grant was mustered out with his regiment, and returned to his practice. He has been associated with the best men of the bar, and at present is the attorney for some of the oldest and most reliable business firms in Stockton.

He is a man of ability, determination and energy, and is distinguished as a public speaker of force and eloquence.



CITIZENSHIP OF CHINAMEN

MARSHALL B. WOODWORTH

Marshall B. Woodworth

CITIZENSHIP of CHINAMEN*

The Wong Kim Ark case, decided by the United States Supreme Court on March 28, 1898, decides, for the first time in that tribunal, the question whether a person born in the United States of foreign parents is a citizen of the United States under the citizenship clause of the Fourteenth Amendment. The decision holds, substantially, that the language used in the Fourteenth Amendment to the Constitution is declaratory of the common-law doctrine, and not of the international law doctrine, and that, therefore, a person born in the United States is a citizen thereof, irrespective of the nationality or political status of his parents. While the question has arisen before and has been referred to in some of the decisions of the Supreme Court, still it cannot be said to have been directly involved and squarely decided until the present decision in the Wong Kim Ark case. This case settles, once for all, the question of the citizenship of children born within the United States, whose parents are foreign subjects or citizens. While it is the commonly accepted notion, and that generally entertained by the profession, that all persons born within the United States, whether of foreign parents or not, are citizens, still popular impressions may be common errors, and are not always to be regarded as the safest tests of what the law is. Whatever of doubt and misapprehension exists on the question is because of the existence of two general doctrines or tests of citizenship by birth; one, the common-law doctrine, which makes birth in a country sufficient to confer citizenship; the other, the doctrine of the law of nations, by which the political status of children is fixed by that of parents, irrespective of the place of birth. While the question before the Supreme Court was, what constitutes citizenship of the United States under the Fourteenth Amendment, still the peculiar phraseology of the citizenship clause of that Amendment necessarily involved the further and controlling proposition as to what that clause was declaratory of; whether it was intended to be declaratory of the common-law or of the international doctrine. The Fourteenth Amendment reads as follows: "All persons born or naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States and of the State wherein they reside." The question, around which the chief argu-

*This article appeared in the *American Law Review* for July-August, 1898. We received a copy from the author's hands, and give it a permanent place here, as being a valuable contribution to the judicial history of California.—EDITOR.

ments have centered, both by counsel in the Wong Kim Ark case and by general writers on the subject, is as to the meaning of the qualifying phrase, "*and subject to the jurisdiction thereof.*" This phrase was seized upon by the advocates of the international law doctrine as meaning subject to the "political jurisdiction" of the United States, and therefore as being declaratory of that doctrine. Such were the views very plausibly maintained by Mr. Geo. D. Collins, who appeared in the Wong Kim Ark case as *amicus curiae*. The exponents of the common-law doctrine, on the other hand, contended, and, it must be admitted, with superior logic, that the Fourteenth Amendment was declaratory, in effect, of the common-law doctrine. The latter contended that the expression, "Subject to the jurisdiction thereof," meant nothing more than being subject to the "laws" of the United States, comprehending such obedience as every alien owes while within the territorial limits of a foreign country. While at this late day, the question as to which of these two doctrines obtains in the United States may savor of scholastic disquisition into what should be well-settled law, still the Supreme Court considered the question of sufficient importance and perplexity to grant two hearings, and the elaborate and lengthy opinions, both prevailing and dissenting, indicate the labor, research and care given to the consideration of the question. The fact that the decision of the court was not unanimous indicates that the question is at least debatable. Mr. Justice Gray wrote the prevailing opinion, which was concurred in by all the justices excepting Mr. Chief Justice Fuller and Mr. Justice Harlan, both of whom dissented. Mr. Justice McKenna, not having been a member of the court when the arguments took place, did not participate in the decision.

The Wong Kim Ark case arose upon a writ of habeas corpus in the United States District Court for the Northern District of California. The facts of the case were, briefly, that Wong Kim Ark was born in 1873 in the city of San Francisco; that his father and mother were persons of Chinese descent, and subjects of the Emperor of China; that they were at the time of his birth domiciled residents of the United States; that they continued to reside in the United States until the year 1890, when they departed for China; that about 1894, Wong Kim Ark made a voyage to China and returned to the United States in August, 1895; that he applied to the collector of the port at San Francisco for permission to land, and was denied such permission upon the sole ground that he was not a citizen of the United States, but that he was a Chinese subject, and, being a laborer, was excluded by the Chinese Exclusion Laws. From this refusal to permit him to land, a writ of habeas corpus was sued out in the United States District Court presided over by Hon. Wm. W. Morrow. Upon a hearing duly had, that court discharged Wong Kim Ark on the ground that he was a citizen of the United States by virtue of his birth in this country, and that the Chinese Exclusion Acts were therefore inapplicable to him. The case was thereupon carried to the United States Supreme Court, which has affirmed the decision of the lower court.

Mr. Justice Gray thus stated the question submitted for the consideration of the Supreme Court: "Whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the constitution, 'All persons born or naturalized in the United States, and subject

to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.'" Then follows a most elaborate, exhaustive and able consideration of the question of citizenship of the United States. The opinion contains an exceedingly interesting, able and erudite review of the entire question, and may well be said to exhaust all the learning on the subject. The opinion will undoubtedly go down to posterity as the leading and pioneer authority in the United States on the question of what constitutes citizenship under the Fourteenth Amendment to the Constitution of the United States. It is too lengthy to give a detailed resume of it. The syllabus to the opinion published in the Supreme Court Reporter indicates very clearly the rationale of the decision. It is as follows:

"(1) In construing any act of legislation, whether a statute or a constitution, regard is to be had, not only to all parts of the act itself, and of any former act of the same law-making power of which the act is an amendment, but also to the condition and the history of the law as previously existing, and in the light of which the new act must be read and interpreted.

"(2) As the constitution nowhere defines the meaning of the word 'citizen of the United States,' except by the declaration in the Fourteenth Amendment that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States,' resort must be had to the common law, the principles of which were familiar to the framers of the constitution.

"(3) Under the common law, every child born in England of alien parents, except the child of an ambassador or diplomatic agent or of an alien enemy in hostile occupation of the place where the child was born, was a natural-born subject.

"(4) The Fourteenth Amendment to the constitution, which declares that 'all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside,' is affirmative and declaratory, intended to allay doubts and settle controversies, and is not intended to impose any new restrictions upon citizenship.

"(5) It affirms the ancient rule of citizenship by birth within the territory in the allegiance and under the protection of the country, including all children here born of resident aliens, except the children of foreign sovereigns, or their ministers, or born on foreign public ships, or of enemies during a hostile occupation, and children of Indian tribes owing direct tribal allegiance. It includes the children of all other persons, of whatever race or color, domiciled within the United States.

"(6) The Fourteenth Amendment to the constitution, in the declaration above cited, contemplates two sources of citizenship, and two only, birth and naturalization. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen thereof, and needs no naturalization. A person born out of the jurisdiction can only become a citizen by being naturalized, either by treaty or by authority of congress, in declaring certain classes of persons to be citizens, or by enabling foreigners individually to become citizens by proceedings by judicial tribunals.

"(7) At the time of the adoption of the Fourteenth Amendment of the Constitution, there was no settled rule of international law, generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion.

"(8) The laws conferring citizenship on foreign-born children of citizens do

not supersede or restrict, in any respect, the established rule of citizenship by birth.

"(9) Before the Civil Rights Act, or the Fourteenth Amendment to the Constitution, all white persons born within the sovereignty of the United States, whether children of citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were natural-born citizens of the United States.

"(10) The refusal of congress to permit the naturalization of Chinese persons cannot exclude Chinese persons born in this country from the operation of the constitutional declaration that all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.

"(11) Chinese persons born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States so long as they are permitted by the United States to reside here, and are 'subject to the jurisdiction thereof, in the same sense as all other aliens residing in the United States; and their children 'born in the United States' cannot be less 'subject to the jurisdiction thereof."

"(12) A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes, at the time of his birth, a citizen of the United States."

In arriving at the conclusion that Wong Kim Ark was a citizen of the United States, although born in this country of foreign parents, the court uses the following language: "The foregoing considerations and authorities irresistibly lead us to these conclusions: The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled there, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is yet in the words of Lord Coke, in *Calvin's Case*, 'strong enough to make a natural subject, for if he hath issue here, that issue is a natural-born subject;' and his child, as said by Mr. Binney in his essay before quoted, 'if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle.' It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides—seeing that, as said by Mr. Webster, when secretary of state, in his report to the President on Thrasher's case in 1851, and since repeated by this court, 'independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an

alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations.'

"To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treated as citizens of the United States."

The dissenting opinion is elaborately drawn and, for the most part, may be said to be predicated upon the recognition of the international law doctrine. But the error the dissent apparently falls into is that it does not recognize that the United States, as a sovereign power, has the right to adopt any rule of citizenship it may see fit, and that the rule of international law does not furnish, *ex proprie vigore*, the sole and exclusive test of citizenship of the United States, however superior it may be deemed to the rule of the common law. It further does not give sufficient weight, in interpreting the Fourteenth Amendment, to the doctrine which was prevalent in this country at the time of the adoption of the constitution and of the amendment in question, which was undoubtedly that of the common law, and not of international law.

In conclusion, it may be said that the decision sets at rest whatever of doubt may have been formerly entertained on the proposition. It conclusively answers the advocates of the international law doctrine. With respect to the superiority of the international law doctrine over that of the common law, it may be conceded that while the rule of international law, that the political status of children follows that of the father, and of the mother, when the child is illegitimate, may be more logical and satisfactory than that of the common law, which makes the mere accidental place of birth the test; still if the Fourteenth Amendment is declaratory of the common law doctrine, it is difficult to see what valid objection can be raised thereto, nor how the subject of citizenship of the United States can be deemed to be governed by the rule of international law in the absence of an express adoption of that rule, any more than it could be governed by the law of France, or of China.

——*MARSHALL B. WOODWORTH.*

San Francisco, Cal.

EARLY BENCH AND BAR OF SAN JOSE

JOHN E. RICHARDS

J. E. Richards

The EARLY BENCH *and* BAR *of* SAN JOSE

I have undertaken to prepare a sketch of the Bench and Bar of San Jose from the era of the American Alcaldes inclusive down to a time when well-established institutions and forms of legal procedure supplanted the ruder and freer methods of pioneer days. The purpose which moves me to this congenial task is the preservation of those traditions, reminiscences, anecdotes and incidents which now rest mainly in the memories of the members, and especially the pioneers, of the profession; and which, as time and fate affect their number, are in danger of being lost. This fund of personal recollection is too rich in humor and in wisdom to go down into forgetfulness. If the product of my leisure can but preserve a modicum of this wealth with somewhat of its original luster, I shall deem the time spent in its collection not entirely thrown away.

THE AMERICAN ALCALDES.

Old John Burton, *Capitan Viejo,* the natives called him, was the first American alcalde of the pueblo of San Jose. He was appointed to the office by Captain Montgomery, military commandant of the northern district of California, on October 19, 1846, about three months after Captain Thomas Fallon had hoisted the Stars and Stripes in front of the Juzgado. The old alcalde was a pioneer of the pioneers. He had deserted from a New England merchantman away back in 1830, and, coming to the pueblo of San Jose, had married a Mexican woman, assumed the title of captain, and lived an easy existence among the natives until disturbed by the American occupation. He was a native of Massachusetts, but he seems to have neglected those opportunities for book learning which that home of culture afforded. He was a man, however, of considerable common sense, is reputed to have been very honest and to have had the esteem and confidence of the native population. The office of alcalde required these qualities in an eminent degree just at that time when the loose garments of Mexican rule were being replaced with the close-fitting fabric of American institutions. The alcalde's courts of California had, prior to the change in government, possessed a very wide and quite undetermined jurisdiction and been conducted with a freedom from the formalities of jurisprudence which was primitive in the extreme. Alcalde Burton continued to exercise the jurisdiction of his predecessors with much the same laxity in forms. No fusty lawyers ever profaned the sacred precincts of Alcalde Burton's Juzgado to either hinder or hasten his judgments with pleas or writs sustained by musty precedents. There was a patriarchal simplicity about

the administration of justice in Alcalde Burton's court. The old Juzgado stood in the center of what is now known as Market street, at its intersection with El Dorado. It was a low adobe building divided into three compartments—the alcalde's court, the smaller rooms for the clerk of the court, and the calaboose. A picture of this structure is to be found in Hall's "History of San Jose." There old Captain Burton sat and administered justice in his own original way, following somewhat loosely the forms of the Mexican law relating to alcaldes' courts. The method of procedure was as interesting as it was unique. Every grievance which a complainant had against a person for which he had, or hoped to have, a legal remedy, he carried to the alcalde and orally stated his case. Thereupon Alcalde Burton called his *aquazil,* or constable, and delivering to him his silver-headed cane, as the symbol of his authority, directed him to bring the person against whom the complaint was urged before the alcalde. The cane was an important part of the judicial system. It was the *vara de justicia,* or "staff of justice," and in the hands of the *aquazil* it symbolized the State. Bearing the alcalde's silver-headed cane before him, the *aquazil* sought out the defendant and holding up the staff delivered his oral summons to appear immediately at the Juzgado. The defendant never disobeyed the command of the alcalde, but came at once before him. When he arrived, the complainant was sent for and the parties met in the presence of the alcalde. What was technically called, what in fact was, "an altercation" then ensued between the parties. The alcalde sat and heard their dispute and endeavored to adjust their differences and strike a balance of justice between them upon their own statement of facts. Very frequently he was successful and a sort of compromise judgment was rendered at once. When, however, the parties were too widely apart for compromise the cause proceeded as follows: Each party chose an arbitrator, and these two *buenos hombres,* as they were termed, sat with the alcalde and heard the evidence in the case. If, then, they and the alcalde could agree upon a judgment, it was rendered accordingly, but if not, the alcalde dismissed the *buenos hombres,* and decided the case himself. So ran the wheels of justice in Alcalde Burton's Juzgado.

The record which old John Burton kept of his cases was a very meagre one, and hence a large mass of interesting court notes have been lost to us with the passage of the years. Some few recorded cases there are, and in the recollection of our pioneers a few more remain to illustrate the unique character of primitive justice here. From among the ancient documents reposing in our city archives the following case has been exhumed and translated for this sketch. Pedro Mesa was accused of stealing Thomas Jones' horse. The record reads:

"Territory of California vs. Pedro Mesa—May 1, 1847. The parties having appeared and the case entered into, after weighing the case and taking the testimony, judgment is rendered that defendant shall pay a fine of $5 and $9 for saddling the horse, and costs of court taxed at $4.75; $2 for the guard." Alcalde Burton evidently did not regard horse-stealing as a very serious offense, and does not seem to have visited upon it a sufficient penalty to make the avocation unprofitable. It is curious to note that Alcalde Burton records himself as "weighing the case and taking the testimony." It would appear from all that we can learn that it was the mental habit of the old Captain to weigh the case first and make up his mind about it, and then, as a mere formality, "take the testimony."

Another of Alcalde Burton's decisions has survived the tooth of time. Juan Lesaldo and his wife did not agree and yet had hardly reached that point where they agreed to disagree. Juan, therefore, laid before the alcalde a complaint,

of which with the subsequent proceedings the following record remains: "Juan Lesaldo vs. Maria de los Naves. On complaint of plaintiff that defendant, his wife, he believes is about to abscond, he therefore claims that she be brought before the court to show cause why she will not live with him. The parties having appeared and the case entered into April 27, 1847, it is directed that they be united again, and if not they shall be imprisoned until they consent to live together. May 1st. A letter was sent to the priest of Santa Clara, who ordained that they should be compelled to live together. After three days' time was given she still refused to comply. May 4, 1847. Defendant was put in prison until she should comply with the order of the court." Here the record ends, and whether Maria de los Naves was ever brought back to the arms of her spouse by the stern rigor of the law remains a problem which may well be submitted with "the lady or the tiger" to our modern dames for a solution. So far as known the precedent set by Alcalde Burton has not been followed by those who have succeeded him in a judicial effort to adjust the differences which have ever arisen in domestic life. There are, however, a few fragmentary records of Burton's decisions, which show that he foreshadowed at least some phases of our modern law. On March 7, 1847, Alcalde Burton dismissed a complaint brought by Gabriel Castro against Antonio Hernairo to recover the plaintiff's winnings at a horse-race. It does not appear whether Hernairo was the loser in the wager or only the stake-holder, but if the cause had been tried before our present courts, instead of before the old alcalde, the same rule would be applied.

There are a few other cases preserved in scant records, which, if not yet precedents, might well be made so. In 1847, P. Real complained before the alcalde of "men who stand in the church doors to look at the women as they come from mass." The alcalde adjudged that it was "a practice which should be stopped in the interests of religion, morality and public tranquillity." In another case a Mexican was complained of for selling liquor, and was tried without a jury, for the reason, as the alcalde naively explains, that the "native element of the juries in such cases refuse to convict."

These are about all that remain to us in either record or tradition of the causes which were tried in Alcalde Burton's court. There are a few others which might be told upon occasion, but which may not be written here. This first of the American alcaldes held office for a little more than a year when he returned to the *otium cum dignitate* from which he had been dragged into judicial eminence. He was succeeded by James W. Weeks in September, 1847, and he by Charles White, (who had been Burton's clerk) in 1848, and who in his turn soon gave up the office on account of his disgust at the rising tide of disorder incident to the meeting of two civilizations. Kimball H. Dimmick succeeded White in the latter part of 1848, and was the last of the American alcaldes.

The patriarchal simplicity with which old Captain Burton administered justice within the undefined but unquestioned jurisdiction of his Alcalde's Court, it was not permitted his successors to enjoy or exercise. The influx of strangers following the westward course of Empire, disturbed all of the Mexican institutions which had survived the American occupation, and before the close of the year 1848 disorder ruled in quaint old Pueblo of San Jose. The passive vices of Mexican society, such as gambling, bull fighting, horse stealing and loose domestic morals, became active social sores as the two civilizations met and mingled under the new regime. Cases multiplied before the alcaldes involving serious offenses against society beyond the reach of the simple legal remedies of Captain Burton's day. Not only did these causes put to test the efficiency of the alcaldes

courts, but another state of facts tugged at their anchorage in the old Mexican forms and modified the manner of conducting cases before them. The American jurisprudence forced itself into the Juzgado and insisted upon recognition in the trial of causes involving the rights of American citizens. We find, for example, indications of trials by jury, even in Captain Burton's time, and these became common in cases before the later alcaldes. The common law pleading and process also began to supplant the old oral complaint and the *vara de Justicia*. The reverence which the natives were wont to pay to the alcalde was not felt by the strangers from many lands, and both his staff and his judgments were frequently set at naught. It was this evil condition of society in 1848-9 which caused the alcaldes who succeeded Burton to resign after brief attempts to administer justice at the Juzgado. It was this which called into existence the "Courts of First Instance" in California.

COURTS OF FIRST INSTANCE.

The conditions of change and of disorder which caused the alcaldes' courts to be insufficient agencies of justice in our early society were not confined to San Jose. All over California the need of a better judicial system was felt with increasing force. The alcaldes themselves in various sections gave increase to the discontent by the inefficiency, or worse, with which they conducted their offices. In 1849 J. S. Ruekle, writing to Governor Mason on the condition of things in San Jose, said: "Matters which were originally bad are growing worse; large portions of the population, lazy and addicted to gambling, have no visible means of support, and, of course, must support themselves by stealing cattle or horses. Wanted, an alcalde who is not afraid to do his duty and who knows what his duty is." In Monterey, Walter Colton, who was alcalde, gained the enmity of the large gambling class in the following way: Colton concluded that the town of Monterey needed a public hall and took this novel way of raising the revenue to build it. Whenever he would be informed of a faro game of any size in progress, he would take his staff of justice and repair to the scene of the game. When he thought the pile of gold on the table large enough to suit, he would lay his *vara de Justicia* across the pile and then gather it in. Out of the proceeds of this novel form of judicial tribute, Colton Hall, which still stands in Monterey, was built, but Alcalde Colton lost caste with the gamblers of Monterey, and with a lustiness worthy of our modern days, they clamored for a change. It is to San Francisco, however, that the credit is due for having precipitated the formation of "Courts of First Instance" throughout California, and the tale of how this came about forms an interesting story which until now has not been told in print. I have it from one who received it from the lips of old Governor Riley himself, and it is too good to go untold. Soon after the change from Mexican to American rule, the town and harbor of San Francisco began to assume importance as a commercial center. In the latter part of 1848 it was made a port of entry and a custom-house was established there which became quite an important affair. A good deal of litigation arose, and a strong demand for a better form of government than California then enjoyed. The special grievance of San Francisco was the loose administration of the law in the Alcalde's Court. Early in 1849 the people of San Francisco importuned Congress urgently to establish a territorial government here, but Washington was a long way off and Congress failed to respond. So the people of San Francisco, thinking California ripe and ready for Statehood, undertook to organize a State and to that end sent out invitations to the people to send delegates to a conven-

tion to meet in San Francisco. It seems that the idea of a State was not yet ripe in the popular mind, and hence only a few of the districts outside of San Francisco responded to the call. When the convention met it proceeded to form a sort of State, which was called the State of San Francisco and comprised a territory which included the young city, and extended down the peninsula to somewhere in San Mateo county. They formed a legislative body, elected three justices, abolished the office of alcalde, and of the *Ayuntamiento,* and ordered the officials to turn over their books to the officers of the new State. The alcalde at that time was T. M. Leavenworth and he refused to be abolished or to give up his books, whereupon one of the new justices, assisted by a number of volunteer deputy sheriffs, went over to the alcalde's office and *vi et armis* took his records away. In the meantime Governor Mason had been relieved of his office as Military Governor of California, and General Bennet Riley, his successor, arrived in Monterey while the "State of San Francisco" was organizing itself within his jurisdiction. To him hied hastily Alcalde Leavenworth on a mule, and related his tale of woe. Governor Riley, according to contemporary accounts, was "a grim old fellow" who had an impediment in his speech. He is, nevertheless, also described as "a fine free swearer." This is not the first instance I have heard of that satanic quality which enables a man who stutters badly to swear with ease. He concluded, from the alcalde's story, that the "State of San Francisco" was a revolutionary body, and accordingly he issued a proclamation so declaring and commanding them to disorganize. The testy old Governor took his proclamation to San Francisco himself, resolved to reinstate Alcalde Leavenworth and assert his authority there at all hazards. Let him tell the story himself. "I went," he says, "to see my friend Liedesdorff in San Francisco, and I said, 'Liedesdorff, I want a boat to take me to Benicia.' Liedesdorff furnished the boat, and I went up to Benicia, where Commodore Jones was with his fleet. I says to him, 'Commodore, I want a sloop of war!' 'What do you want a sloop of war for?' asked Commodore Jones. 'I want it,' says I, 'to take down to San Francisco to disband their government there.' Well, Commodore Jones didn't want to give me a sloop of war at first for fear I might get him in trouble, but after I had assured him that I didn't intend to fire a gun or hurt a human being, he told me that the sloop of war St. Mary was lying at Sausalito and that he would give me an order on the captain to place his vessel at my disposal. 'Write out the order,' says I, 'and it's all I want.' So he wrote the order for the sloop of war and I went back to my friend Liedesdorff. The people of San Francisco had heard in the meantime of my presence and visit to Commodore Jones, and were very much alarmed. So they sent a delegation of their new officials to interview me. When they arrived I assumed all of the dignity which I could command. They stated that they had heard I was here with hostile intentions and was about to employ force, and wished to know the truth. I told them that they had organized a revolutionary government within my jurisdiction, and concluded with this statement: 'I have not come here to fire a gun or shed a drop of blood, but I have an order in my pocket from Commodore Jones for the sloop of war St. Mary, and if you damned rascals don't disband your government and restore Alcalde Leavenworth his books and his office within twenty-four hours I will bring down the sloop of war upon you, blockade your port and remove your custom-house to Monterey.'" This threat struck terror to their commercial hearts, and they disbanded forthwith, and Leavenworth was alcalde once more.

When Governor Riley returned to Monterey after this brilliant *coup d'etat* he proceeded to investigate the many complaints against the existing judicial

system of Alcaldes' Courts. He found that an urgent necessity existed for a better judicial system and cast about him for the way to its establishment. He examined the only law book which he could find in Monterey, which was an old Mexican statute passed in 1837, providing a system of government for California. It had never been carried into effect in the territory beyond the organization of the alcaldes' courts. Governor Riley proceeded to organize the remainder of the judicial system this old statute called for, by the creation of Courts of First Instance throughout the territory, and by the formation of a Superior Tribunal, which was a sort of Appellate Court, and sat at Monterey.

With this Superior Tribunal we shall have little to do, for it occupied a very short space in the history of California jurisprudence. The Courts of First Instance, on the contrary, were quite important factors in the judicial history. Their jurisdiction was both civil and criminal. They superseded the alcaldes' courts in all but petty cases. A copy of the Mexican statute of 1837 showing in detail the jurisdiction and rules of practice of Courts of First Instance is to be found in the appendix to Hall's History of San Jose.

It may be interesting to notice one peculiar feature of the practice before these courts. Article X of the Mexican law above cited provides that "No complaint, either civil or criminal, involving simply personal injuries, can be admitted without proving with a competent certificate that conciliatory measures have been attempted by means of arbiters (*buenos hombres*);" and in Article XI it is provided that should a formal complaint have to be made which would cause a litigious process, then "conciliacion" ought first to be attempted. This effort at a settlement by "conciliacion" was a curious proceeding, unlike anything in our American law. I am informed that a similar plan for the settlement of disputes is in vogue in Switzerland, but with that exception I have not elsewhere discovered the duplicate of this proceeding. The "conciliacion" was conducted before the alcalde. The parties appeared at the Juzgado, each with his *buenos hombre* and the alcalde, and the arbiters endeavored to effect a compromise. If they succeeded the matter ended there, but if they failed the alcalde gave to the complainant a certificate showing a vain attempt at a "conciliacion," as required by the law. He then was entitled to carry his cause into the Court of First Instance.

The Court of First Instance was established in San Jose in the spring of 1849. R. M. May was the first occupant of the bench as Judge of the Court. He was shortly succeeded by Judge Kincaid, who remained upon the bench until the court was abolished by the formation of the State.

With the creation of these Courts of First Instance, the "genus lawyer" began to be heard and seen in the land, and litigation multiplied. The pioneer members, the "Nestors," so to speak, of our bar, were Peter O. Minor, C. T. Ryland, Craven P. Hester, James M. Jones, William Van Voorhies, Judge Almond, William T. Wallace, George B. Tingley, Rufus A. Lockwood, and others, some of whom lived in San Jose and some of whom came down from San Francisco when cases required. The exact date of the arrival of these pioneers of the bar it would be difficult to state, and I will not attempt it. Suffice it to say they were here and made matters lively before the Court of First Instance. The yarns which some of these old "Nestors" told upon themselves, upon their clients, and upon each other, would fill a volume. One of the earliest cases tried before Judge Kincaid was the famous "mule" case, entitled Caldwell vs. Godey. The plaintiff sued the defendant for the possession of a mule, which he averred was his property. The defendant denied the allegation, and the case came on. Caldwell produced

a dozen or more reputable witnesses who swore that they had known the plaintiff in Missouri, where he had owned the mule; that they had crossed the plains with him when he brought the mule to California; that there was no doubt about the identity of the animal as Caldwell's mule. On the other hand, the defendant produced as many witnesses equally reputable, who swore that they had known the defendant Godey and his mule in Texas, and that they had come to California with the mule, and there was no earthly doubt that this was Godey's mule. They also swore that the mule was branded with a diamond on his hip. The Court was sitting in the old Juzgado, and was in a quandary indeed. At this point, John Yontz, the sheriff came into court and asked his honor if he should bring in the witness. The Judge, all innocent, told the sheriff to "bring him in." The sheriff brought "him" in and the witness was the mule. He filled the court-room with his presence, and the court with righteous indignation. "Mr. Yontz," said his honor, sternly, "take that mule out of here, sir." "But, your honor ordered me to bring him in," responded Yontz, "and I obeyed the order." The scene was ludicrous in the extreme; the sober face of the facetious sheriff; the still more sober aspect of the innocent mule; the Judge's withered face pale with indignation, and the countenances of the spectators red with mirth. The witness was taken out, but his introduction won the case for the defendant, for there upon his newly shaven hip appeared the diamond brand to which his other witnesses had sworn.

THE STATE CONSTITUTION.

The history of the formation of the State Constitution at Monterey in 1849 is a familiar story. The history of the meeting of the first legislature in San Jose is a fascinating but fading tradition. It has passed into the chronicles of our State as the "Legislature of a thousand drinks." To those who do not know the origin of this designation it is a term of reproach and signifies that the first legislature was a body of drunkenness and riot. This is an error, which in passing I pause to rectify. One of the members of this legislature was a man of exuberant fancy and exaggerated phrases and forms of speech. Whenever he was thirsty, which was frequently, he would shout to his friends: "Come on, boys, and let us take a thousand drinks." Hence the sentence which has passed into history.

The Constitution ordained and the first legislature established a complete system of courts which should supersede the courts of the alcaldes and of First Instance. These were the District, County and Justices' Courts, and they were put into operation during the year 1850. Judge John H. Watson was appointed the nrst District Judge of the Third Judicial District, which included the counties of Contra Costa, Santa Clara, Santa Cruz and Monterey. J. F. Redman was our first County Judge. The influx of population into the State had brought lawyers of all degrees of excellence from all quarters of the globe. The session of the first legislature had left a number of lawyers who were its members to increase and adorn our local bar. There was a large amount of legal business, and in consequence the county of Santa Clara in the early fifties, had, with the exception of San Francisco, the largest bar in the State. Of the many bright minds which practiced law before Judges Watson and Redman and their successors the following are a few:

Freeman McKinney, William T. Wallace, F. B. Murdock, William Matthews, A. L. Yates, E. K. Sanford, Horace Hawes, Rufus A. Lockwood, J. Alexander Yoell, John H. Moore, Judge Almond, William Stafford, William D. Howard. C. T. Ryland, George B. Tingley, Alexander Campbell, A. P. Crittenden, James

M. Jones, Lawrence Archer, Thomas Bodley, Judge Peckham. These are not all, but these will example the early bar, and while many of these are gone forever from our vision, from those who remain the quality of the rest may be estimated. I will tell the stories of this early bar in much the same order that they have been told to me.

Judge Watson was, by profession a physician, who had learned a sufficient smattering of the law to secure a seat upon the bench, for which place there was little competition among lawyers for the reason that the salary was comparatively small, while the fees at that time were large to the lawyer who was competent to be Judge. The style of Judge Watson's charges to his juries was, therefore, often free from legal verbiage and of legal principles as well, as the following story of the case of Dean vs. McKinley will illustrate. The case of Dean vs. McKinley was tried in Monterey, and took its origin in this wise: McKinley was a merchant at Monterey in the "forties." It was part of his business to stock traders who were going to the mines. Dean was one of these traders, and he bought from McKinley a stock of goods, promising to pay him when he returned. Several years passed and Dean did not return until after the American occupation. He came back "broke" and showed no disposition to pay McKinley for his goods. Finally, the latter went before Alcalde Mariano Malarin and had Dean arrested and imprisoned for the debt. The Monterey jail at that time was in no condition to keep a prisoner long in against his will, but it suited shiftless William Dean to stay there. He was his own jailer, and when evening came he would pull the plug out of the jail door and go to the fandangos or other places of amusement, and after the fun was over would go back to the jail, lock himself in and go to sleep swearing "he would make old McKinley pay for this false imprisonment of an American citizen." Well, when the District Court was organized, Dean incited thereto by several lawyers on contingent fees, sued McKinley for large damages for his alleged "false imprisonment." The case came on for trial with a cloud of attorneys on either side. It was a prolonged case, and when concluded was argued at great length by all of the attorneys. When finally the cause was submitted to the jury, Judge Watson squared himself about pompously and delivered the following charge:

"Gentlemen of the jury, as the mariner, returning to his port after a long sea voyage, is enabled to catch a faint and fleeting glimpse of the land through the mists and fogs which surround it, so you, gentlemen of the jury, may be able, by the aid of the court, to catch a dim conception of the facts of this case through the obscurity which the arguments of counsel have thrown around it. Gentlemen of the jury, I will illustrate the merits of this case to you with a simile. I will liken this case to a railroad train. The court is the track, the attorneys are the engine, and the client is the grease. You all know, gentlemen of the jury, how an engine will run when it is well greased. In fact, I have seen engines so well greased as to cause them to 'play such fantastic tricks before high heaven as made angels weep.' To carry the simile further, gentlemen, suppose that a railroad train runs over and kills a man, who is to blame? The engine, the track, or the grease? I think the engine. Gentlemen of the jury, you will bring in a verdict for the defendant."

Judge Redman, who presided over the County Court, was a good lawyer, but was also a man of many peculiarities, of strong prejudices and of eccentric modes of expression. Some of the lawyers of his court he had a great liking for, and toward others he manifested dislike without apparent reason. Among the former class was William T. Wallace, for whom he had a strong affection and always

out of court called him "Billy, my boy." Among the latter was J. Alexander Yoell, against whom frequently and unjustly Redman showed his feeling. One day after the trial of a hotly contested case in which Mr. Yoell took a vigorous part, Judge Redman limped (he had a wooden leg) out of the court-room, leaning on Wallace's arm. Presently he said in a reflective and solemn way, as though speaking to himself: "It would not be idolatry." "What would not be idolatry, Judge?" asked Wallace. "It would not be idolatry to bow down and worship him," said the Judge in the same reflective way. "Worship whom?" asked Wallace. "It would not be idolatry to fall down and worship Yoell," responded Redman. "And why not?" said Wallace. "Billy, my boy," said the Judge, solemnly, "have you forgotten the commandment which says: 'Thou shalt not bow down and worship any likeness of anything that is in heaven above or that is in the earth beneath, or that is in the waters under the earth.' Now, Yoell is not like anything that is in heaven above nor in the earth beneath, nor in the waters under the earth, and therefore I'll be dashed if it would be idolatry to fall down and worship him."

Another member of the early bar whom Judge Redman disliked was F. B. Murdoch, who later went into local journalism. Murdoch had a case of J. H. Moses against somebody, and got a judgment. One of the witnesses in the case was named Moses Scott, and when Murdoch came to write his decree he wrote the name of the witness in it by mistake for that of the plaintiff. Discovering his error later on, he made a motion before Judge Redman to set aside the decree and have entered an amended one. He argued his motion at length, and when he had concluded, Judge Redman rendered this decision: "Mr. Murdoch, your motion is denied. It has long been the well-settled rule of this court that when an attorney comes before this court with a case and burns himself he will be compelled to *sit* on the blister."

Among the attorneys who practiced before Judge Redman was Freeman McKinney, whom all the early pioneers remember. He was a little fellow with a long red beard, which came down to his waist, and withal a man of a good deal of force and dignity. One day a fellow was arraigned before Judge Redman for horse-stealing. He had no attorney. The Judge appointed "Free" McKinney to defend him, with this instruction: "Mr. McKinney, the court appoints you to act as attorney for this defendant. You may retire with him and get his statement of his case. You will give the prisoner the best advice and assistance you are able in view of the law, and of the facts he may give you." McKinney went out with the prisoner to the door of the Court-House and asked him if he had any money. The fellow said he had a fifty-dollar slug. "Give it to me," said McKinney. The fellow reluctantly gave up the slug. "Now," said McKinney, "as a matter of fact, you stole that horse, didn't you?" The prisoners admitted to his attorney that he did. "In that case," said McKinney, "I advise you to get into the brush as fast as the Lord will let you." The prisoner "got," and McKinney presently wandered back into the court-room and sat down. Soon the case of the horse-thief was called. "Where is your client, the prisoner, Mr. McKinney?" inquired Judge Redman. "I don't know, Your Honor," answered McKinney with the utmost sang froid; "the last time I saw him he was making for the brush about as fast as he could go." "Is it possible, sir," thundered the court, "that you have permitted the prisoner to escape?" "Your Honor," said McKinney, calmly, "I have obeyed to the letter the order of this Court. Your Honor appointed me as the attorney for the defendant, with the instruction that I should give him the best advice I was able in view of the law and the facts. The facts

were, as the defendant admitted to me, that he stole the horse. The best advice I could give was to get into the brush."

"Humph!" snorted Judge Redman, as McKinney sat down with dignity, "call the next case."

The story of how Jo Johnson summoned Judge Redman into court one morning, and the penalty therefor, is fresh in the mind of more than one of the pioneers of the bar. Judge Redman liked his tipple, and also would "buck the tiger" on occasion. The County Court was held for a season in a building which stood near the corner of Santa Clara street and Lightston alley. A saloon was across the street in which Judge Redman spent most of his time, and where he often lingered beyond the hour for convening his court. One day the assembled bar grew impatient at his absence. Freeman McKinney called the bar to order and gravely moved that the bailiff be instructed to call "Old" Redman at the door of the court three times, and that if he failed to answer he be fined for contempt of court. The bailiff was Jo Johnson, and taking the matter in all seriousness, he went to the door, and in a powerful voice called out: "Old Redman! Old Redman! Old Redman! If you fail to answer you will be fined for contempt of court." The stentorian tones of Bailiff Johnson penetrated to the room where Judge Redman was seated at his game of cards. He deliberately finished the game, and then the lawyers heard the uneven thump of the Judge's wooden leg as he crossed the street. He entered the court-room slowly, ascended the bench with dignity, and then said with judicial serenity: "Mr. Clerk, enter a fine of $75 against Jo Johnson, for contempt of this court." When Jo Johnson afterward told this story he always ended it, in an injured tone, with the statement: "The worst of it was that the blanked old fool made me pay that fine."

Apropos of Judge Redman's social infirmities, the following story is told as an actual fact: The bar became tired of the Judge's lapses and eccentricities, and at last felt called upon to request him to resign. The request was signed by every member of the bar in the county, and was served one evening upon the Judge. The next morning his court-room was full of lawyers to see what effect their petition would have upon Judge Redman. The Judge entered the room, perfectly sober and with a sad and contrite expression upon his face. He walked with halting step down the aisle and awakened a feeling of pity in the breasts of several who had signed the request. The court opened with the customary "Hear ye," and the venerable form of the Judge arose from the bench. He looked timidly around as though searching for a friend and then in flattering tones addressed the bar: "Gentlemen of the Bar," he said, "last night I received a petition from you, signed by all of your number, couched in respectful language and setting forth certain reasons why I should tender my resignation as Judge of this court. Conscious of my many infirmities and realizing the necessity of a pure judiciary, throughout the silent hours of the past night I have given to your petition painful, and I may add, prayerful consideration. I feel, gentlemen, that you have acted from a high sense of duty in this matter (here the eyes of the members of the bar began to moisten with tears), and in responding to your petition requesting my resignation, I would simply say (here the Judge straightened up and altered his tone) that I will see you all in hell first, and then I won't resign. Mr. Clerk, call the next case."

It was one of Judge Redman's infirmities, if it be such, to be fond of horse racing, and to bet freely on his favorite. Horse races were very frequent in the early fifties, and Judge Redman generally contrived to make the sessions of his court conform to the time of the race. One day a cause was on for argument

in his court wherein John H. Moore represented one side, and a San Francisco lawyer the other side of the controversy. A race was coming off that day. Judge Redman had little difficulty in persuading Moore to submit the case without argument, in order that both court and counsel might attend the race. The San Francisco attorney, however, insisted on arguing his side of the case. During the first portion of his speech Judge Redman listened patiently, but as the hour for the race approached the Judge became fidgetty and cast anxious glances at the hands of the clock with increasing frequency. At last, when the hands of the clock had all but reached the hour of the race, the attorney closed his speech. As he sat down the court hurriedly arose and without a break uttered the following sentence: "I will take this case under advisement until 10 o'clock tomorrow morning. This court is adjourned. Moore, I'll bet you $100 the black filly wins the race."

One of the most celebrated cases of Judge Redman's court was the trial of a mulatto girl named Minda Johnson, for grand larceny, in 1852-3. "Mindy" was a very good-looking girl of ripe charms and quite popular among the bloods of the bar. It was even reported that Judge Redman had a weakness for "Mindy." She was by vocation a cook and washerwoman, and one day fell from grace to the extent of stealing some articles of clothing and a carpet-sack with $300 in money from the premises of a man named White. The theft was discovered and "Mindy" was arrested and indicted. In those days grand larceny was a capital offense. The evidence was clear and the girl's own confession sealed her fate. She was tried before Judge Redman and convicted. The verdict of the jury was recorded, and the moment for her sentence came. Judge Redman was at his wits' end for an excuse to save her, but he had none. "Mindy," said the Judge, with assumed severity, "stand up." Mindy stood up. "You have been indicted, Mindy," said His Honor, "for the crime of grand larceny, tried by a jury of your fellow-men and found guilty of the charge. Have you any cause to show why the judgment of the court should not be pronounced against you? Hey!" At this moment Freeman McKinney, who, with William T. Wallace, had been "Mindy's" attorneys, arose, and with much dignity moved the court for arrest of judgment, upon the ground that it had been shown in evidence that "Mindy" was brought to California by a man named Clarkson as a slave, and had never been manumitted. That as a slave she was property, and that as property she could not commit grand larceny. "Ah!" said Judge Redman with a sigh of infinite relief. "That's the point which the court had in mind during the whole trial of this case, but did not want to suggest to counsel for the defendant. I am glad to see, young man, that you have not forgotten your early training in the law nor failed to burn the midnight oil in this case. The point is well taken; the defendant is discharged, the jury is dismissed, and the court is adjourned." District Attorney Moore protested, but his protest availed not. The court remained adjourned, and "Mindy" went on her way rejoicing. The record of this remarkable case, if any one is curious enough to consult it, is to be found in Record Book H, Court of Sessions, among the musty files of the office of the County Clerk.

There is another story of Judge Redman, in which John H. Moore figures in his capacity of district attorney, and I know he will pardon me for telling it. In 1852 the State legislature passed a law depriving the County Court of jurisdiction to try certain offenses, of which grand larceny was one. It took some time in those days to get the official copies of the statutes distributed about the State. There was pending in Judge Redman's court about that time a peculiar case of

grand larceny. A somewhat lawless limb of the law had gone out deer hunting, and failing to find deer, had shot and carried home a fine young heifer belonging to a Spaniard, who, discovering the offender, had the lawless lawyer indicted. He retained Messrs. Lawrence Archer and William T. Wallace to defend him, and the case came on for trial. Of course, Archer and Wallace wished to clear their client both because he was such and also because he was a fellow attorney. Possibly Judge Redman shared in this desire. It was a hot May morning some weeks after the legislature had adjourned that the case was called in Judge Redman's court. District Attorney Moore arose and asked that the case be certified to the District Court in consequence of the statute recently passed which took away the jurisdiction of the County Court. "Mr. Moore," said Judge Redman, "what evidence have you to offer showing that this court has no jurisdiction to try this case," Mr. Moore respectfully called the attention of the court to the statute which the legislature had passed. "But what proof do you present of the passage of any such statute?" asked the Judge. "Why, everybody knows that the statute was passed," said Moore, "and here is a newspaper containing the statute in full," answered the district attorney. "Mr. Moore," said Judge Redman, "this court does not act upon what everybody knows in depriving itself of a jurisdiction it has often exercised, and, furthermore, I will inform you, sir, that a newspaper is not evidence of anything in this court. Proceed with the trial." In vain the district attorney protested that the court had lost its jurisdiction. The court insisted on going on with the case, until at last the district attorney, in a rage at the court, left the room. This stopped the case, and the attorneys for the defendant wanted it to go on. After awhile Judge Redman sent the sheriff after the district attorney and again demanded that he either go on with the case or produce a certified copy of the statute. Mr. Moore would not do the one and could not do the other, and went off again inwardly (and, I suspect, outwardly) cursing the court. Again and again he was sent for, and again and again the same performance was gone through by the Judge, and so the hours of a sweltering day moved on in the old adobe Court-House until at last Judge Redman, after a last vain attempt to get Moore to try the case, commanded the clerk to enter upon the minutes of the court that the case having been called and the district attorney having been ordered to proceed with its trial, and having both refused to do so and failed to show by proper evidence, that the court had lost jurisdiction of the case, the prisoner was ordered discharged. So the lucky dog of a lawyer escaped justice, and Messrs. Archer and Wallace won a bad case without a struggle.

Among the lawyers who sought success at the San Jose bar in the early "fifties" there were some who found it not and who were compelled at last to seek it in other vocations and other fields of labor. Among these was a lawyer named William M. Stafford—a great big jovial fellow who could not somehow succeed, and had a hard time to get along. He lived in the southern portion of the city in a tumble-down tenement and came to be known among his fellow lawyers as "The Lord of Hard Scrabble." At last he gave up the struggle for success at the bar, and going down to Pajaro Valley, engaged in farming. His departure was celebrated by the publication of a poem written by Colonel William D. M. Howard, a very bright and witty lawyer of the time. I extract from it a few stanzas for the purpose of illustrating the humor and merit of Colonel Howard's production:

THE LORD OF HARDSCRABBLE.

The Lord of Hardscrabble. Oh! where has he gone?
He has vamoosed his rancho and left us forlorn.

He has gone to the land where the big "praties" grow,
In the rich, loamy valley of the Rio Pajaro.
No more shall his presence enliven our hall
In spring and in summer, in autumn and fall,
No longer his eloquent counsel we'll hear,
When the wise City Fathers in conclave appear.
No more will we gather those gems of debate
He let fall when discussing affairs of the state,
With a broadcast of "palabros" scattered around
Like the ripe fruit of autumn strewn over the ground.
The Lord of Hardscrabble, Oh! what will he do,
Where the Locos abound and the Whigs are so few;
For he's gone where the cocks of Democracy crow.
O'er the crestfallen coons of Rio Pajaro.

In the good old Whig cause he was valiant and stout,
Was never yet conquered and never backed out,
And Democracy will find itself in a bad box,
For he'll rally the coons and be down on the cocks,
The Lord of Hardscrabble's a gallant old blade,
As the sex will bear witness, both matron and maid;
But somehow or other he lived "an old bach,"
Till the roof of his head had disposed of its thatch.
Oh! why has he ventured to go forth alone
With "no flesh of his flesh," no bone of his bone?
May some kind-hearted maiden his loneliness bless,
And his fine portly shadow may it never grow less.
And when of warm evenings he seeks his repose,
On his cot in the house or the ground out of doors,
May there be no mosquitoes around him in flocks,
No flies on his nose and no fleas in his socks;
May his dairy be filled with butter and cheese
And his acres abound with "frijoles" and peas,
Grain, onions, potatoes, whatever will grow
And advantage him most in Rio Pajaro.

The Lord of Hardscrabble, when will he return?
His absence both daily and nightly we mourn.
And a greeting of joy will resound in his ears,
When his well-known "Cabeza" among us appears.
Roll on, happy day, when his jolly old face,
All radiant with smiles, shall illumine this place;
With his purse full of cash and his heart full of joy,
Success to Hardscrabble, the jolly old boy.

THE FIRST COURT-HOUSE.

The first Court-House of the county of Santa Clara was located on the west side of First street between Santa Clara and El Dorado streets, and about opposite what was then Archer, but is now Fountain alley. The lower part of this building was adobe and was used as the court-room of both the District and the County Courts. The upper part was frame with the stairway on the outside of the building and in that portion were located the offices of the sheriff and clerks of the court.

Judge Watson was the first District Judge, Judge Redman the first County Judge, E. K. Sanborn the first district attorney, H. C. Melone the first clerk, and John Yontz the first sheriff of the county of Santa Clara. In this old Court-House during the years 1850-1, these dignitaries with the assistance of the members of the bar, dispensed justice in their own primitive but rather vigorous way. A great many of the cases were tried with the aid of the jury, and out of this fact arose a curious custom, which, as is perhaps well known, has gone out of date. In the early "fifties" whittling was a great accomplishment in the average citizen, who idled his time away about the stores or saloons or in the plaza of the village

of San Jose. It was probably from this class of citizens that the early juries were mainly drawn. When trials were tedious and arguments of counsel long drawn out, what else could be expected than that the expert whittlers on the jury would perhaps unconsciously display their skill on the benches, posts and railing of the jury box. Sheriff Yontz, soon after his official duties began thought that the redwood and pine of the jury box in the court-room were growing grotesque in form and beautifully less beneath the expert jack-knives of his juries. He was at a loss for a time for a remedy, but presently he found it, and thereafter at every session of the court, when a jury was to be drawn, Sheriff Yontz gravely brought into the court-room and placed on the jury box a large bundle of white pine sticks cut to a size and shape to suit the whittler's fancy. By this expedient the sheriff saved the pillars and benches of the jury box from a destruction which was more rapid than the tooth of time.

The courts did not remain in this first Court-House very long for the reason that a more suitable and commodious building was placed at their services. This was the State House in which was held the session of the first legislature, and which stood on the east side of Market square, a little south of the site of the new Postoffice building. The building was originally erected by Messrs. Sainsevain and Rochon in 1849, and was intended for a hotel. When the first legislature was about to meet the town council looked about for a suitable place for the session and selected this structure. The rent asked for it was $4000 a month, which seemed very high, and it was finally deemed wiser to purchase the building outright. But here a difficulty presented itself. The municipality had no money, and the owners of the building were not willing to accept the corporation as security for the purchase price. To the honor of the city and of its citizens be it recorded that nineteen of our public-spirited pioneers came forward and executed their note for $34,000, with interest at eight per cent *per month* from date until paid, as the purchase price of the premises. How that note was finally paid is a story that need not be told. Suffice it to say that the structure so purchased was turned over to the first legislature for its session, and was subsequently occupied by the District and County Courts, until the building was destroyed by fire on March 29, 1853, when the courts went elsewhere for their quarters.

Any sketch of the Bench and Bar of San Jose during the fifties would be incomplete without a mention of the "Old Mansion House," which was during that decade the leading hotel of the city, and which especially was the haunt of the migratory attorneys of the time. It stood upon the site of the building now known as Music Hall, and cost about $100,000. One of the features of the hotel was a very ample fire-place, which its sitting-room contained. How many bright spirits met and sparkled in front of that old fire-place with its blazing back log. How many of our pioneers read their golden futures in its ruddy embers. How many dreams there cherished were realized, and how many like its own flames faded into ashes, no one can ever tell. Only a few of its scintillating sparks have lingered in the memories of men. The following is one which I have rescued from forgetfulness, and since it concerns our first District Judge, I tell it here. Judge Watson dearly loved a joke—on some one else—and even (a rare quality) appreciated a joke upon himself. He was full of wit and humor as he was of law, and both were of that free and easy kind peculiar to the times. The Judge wore a beaver hat which cost him $16, and was very proud of his tile. Among his Mansion House acquaintances were George McDougall and Ben Lippincott, both as full of deviltry as an egg is of meat. Lippincott was a crack shot and often went hunting. One day these worthies, while off gunning, set a trap for

Judge Watson. They loaded Lippincott's gun with a double charge, putting each in separately. Returning to the Mansion House, Lippincott placed his gun behind the bar and went away. Presently Judge Watson came in, and McDougall engaged him in conversation upon Lippincott's skill as a wing shot. "Judge," said McDougall, "Lippincott thinks he's a devil of a fine shot; now I propose that you and I put up a job on him. Let's withdraw the charge from his gun, and when he comes in you bet him a box of champagne that he can't hit your hat thrown up in the air." Judge Watson thought that a capital joke. He smiled all over while the charge (one charge) was being drawn. His face shone like the gilded ball upon the Liberty pole. Presently Lippincott came in, and to him the Judge said: "Ben, you are a pretty good shot on the wing, in your own mind, but I'll bet you a box of champagne you can't take your gun there and hit my hat as I throw it up in the air." "I'll take that bet," said Lippincott, and straightway got his gun. The party went out in the street; the usual crowd collected; the word was given; up went Judge Watson's hat in the air; bang went Lippincott's gun, and the hat, oh! where was it? Upon the swarthy face of Judge Watson, so lately all ecstacy, amazement sat. He saw the sell and joined in the general shout at his own expense, and then the boys went in and sampled the Judge's champagne.

Among the lawyers who practiced at the bar of our District Court in the early "fifties" was William B. Almond, who had been Judge of the Court of First Instance in San Francisco before the organization of the State. Judge Almond was a genial gentleman of the old school, and who loved his tipple and always kept a demijohn of "cognac" in his chambers adjoining the court. When the judicial duties of the day were over, it was the Judge's habit to go to his chambers and enjoy a glass of cognac. The Court of First Instance was a very busy tribunal during Judge Almond's term, owing to the many cases which arose in '49 over the possession of lots in the growing city. In consequence Judge Almond had a great many papers in the form of orders and decrees to sign, and in the hurry his signature often became a very hasty and formal act. Among the attorneys who practiced in Judge Almond's court was Gregory Yale, who loved joking and brandy with equal fervor. On one of Judge Almond's busiest days, Gregory Yale gravely presented an order for the Judge to sign. The signature was attached and Yale went away. Presently the court adjourned, and Judge Almond went to his chambers for his wonted glass. The demijohn was gone, and in high dudgeon Judge Almond called the bailiff of the court and asked what had become of it. The bailiff answered that he had taken it over to the office of Gregory Yale. "Who ordered you to do that?" said the Judge, in a rage. "Your Honor did," responded the bailiff, and straightway drew from his pocket the following order duly signed by the Judge:

"Good cause appearing therefor, it is ordered that the bailiff of this court do forthwith convey to the office of Gregory Yale, Esq., that certain demijohn of cognac, now lying and being in and upon those certain premises, known and more particularly described as the Chambers of the Honorable Judge of this court." It was the order he had signed that morning. Judge Almond never saw nor tasted his cognac again, but the flavor of this joke remained with him for many a day.

RUFUS A. LOCKWOOD.

Throughout all my gleanings of fact and fancy there has been constantly presented to me the outlines of a gigantic figure; the reminiscences of a character vast and strange; the recollections of a genius more powerful, more original,

and yet more eccentric than any other which ever flashed its light across the history of California; the memories of a man and of a lawyer whose living and whose dying verified the truth, "Great minds to madness closely are allied." I refer to Rufus A. Lockwood.

In the early part of the year 1850 an important case came on for trial in the Court of First Instance at San Jose. It was the case of Hepburne vs. Sunol et al., involving the title and right of possession of a portion of the Los Coches Rancho. C. T. Ryland and John H. Moore represented the plaintiff and James M. Jones appeared for the defendants. The plaintiff's attorneys were then young men, recently from the East and not yet versed in the Spanish language or law. The attorney for the defendant, on the contrary, was a lawyer of great experience in the practice of the civil (or Spanish) law and a linguist perfectly familiar with the Spanish language. He was, moreover, one of the deepest students and most brilliant men of the time, and in the case at issue had the young attorneys for the plaintiff at a disadvantage. One day while some phase of the case was up before Judge Kincaid for argument, E. L. Beard, of the San Jose Mission, happened into the court-room and soon saw that Moore and Ryland were getting worsted in their case by reason of Jones' superior knowledge of the Spanish law. He went over to Moore and suggested that he ought to have the assistance of a lawyer who could read Spanish and cope with Jones in the application of the law. "Where can we find such a man?" asked Mr. Moore. "I have the very man you need at the Mission," answered Beard, "and I'll send him down to assist you. His name is Lockwood." When the day for the trial of the case came on there walked into Judge Kincaid's court-room in the old Juzgado a large, awkward and roughly dressed man and took his seat with the plaintiff's attorneys. It was Rufus A. Lockwood. He made no immediate manifestation of power, but listened closely while the pleadings were read, the jury impaneled, and the trial of the cause begun. He saw that the case involved one of those clashings between the American and Mexican people so common in those early times. He noticed that the jury was a "Missouri" jury, whose sympathies would naturally be with the plaintiff. He quietly waited for his opportunity to cope with the only dangerous element in the case, viz., the learning and ability of James M. Jones, the defendant's attorney. Presently a question of law arose and Jones began to argue it with the aid of the Spanish statutes, which he read and then translated to the court. He made an argument clean cut and strong, as was his wont, and sat down confidently. Then Lockwood arose, and with one sweep of resistless logic destroyed the whole fabric of Jones' speech. He turned to the very statute from which Jones had quoted, read it with the facility of a master of the Spanish tongue, translated it luminously, expounded it learnedly, and from it showed to court and jury that the law was with the plaintiff in the case. The whole court-room gaped with astonishment, while the plaintiff and his attorneys hugged themselves with delight at the possession of such an ally. Every one felt and saw that they were in the presence of a master mind. The expected victory of Jones was turned into a rout, which during the remainder of the trial he could not check with all his talent and industry. He worked his night out to win his case, but in vain. "This man Lockwood is killing me," said Jones to Moore as the case drew to its close. The last day of the trial was February 22, 1850, when Lockwood's speech to the jury was delivered. Brief snatches of that splendid burst of oratory still linger in the memories of our pioneers who were privileged to hear it. They tell of Lockwood's description of the Battle of Buena Vista, which occurred on February 22, 1846, and of which this day was the anni-

versary. He pictured General Taylor's victory over the "greasers" to that jury of Missourians and called on them to celebrate it today with a victory for the American plaintiff and against the "greaser" defendant in the case. Such an appeal was irresistible, and Lockwood not only won his case, but established himself at once as the greatest lawyer who had ever shaken the walls of the Juzgado with the thunders of his eloquence.

The next great case in which Lockwood was engaged and tried in San Jose was the case of Metcalf vs. Argenti. This suit arose in this wise: Argenti was a banker in San Francisco, and was prominent among the members of the first vigilance committee. Metcalf was an arrival from Australia, who for some reason fell under suspicion and was roughly treated by the Vigilantes. He brought suit against the leading men composing that body and employed Lockwood and Edmund Randolph as his attorneys. The case was tried first in San Francisco and resulted in a mistrial by reason of the strong prejudice in favor of the Vigilance Committee in that city. It was then transferred to Santa Clara county for a second trial and came on in 1852. Lockwood was very much opposed to the methods of the Vigilance Committee and went into this case with more than usual zeal and vigor. Those who heard his speech to the jury in that case say that it surpassed all of the speeches they have ever heard before or since. It was published in pamphlet form, and may still be found occasionally in the libraries of the lawyers of that time.

The abilities which Lockwood displayed in the trial of these great cases gave him a State reputation as being the greatest lawyer on the Coast. Doubtless he was, and would have died in the secure possession of that reputation, but for that strain approaching insanity in his nature, which led him to such extremes in conduct and experience. Many stories are told of his skill in the court-room, where he was the wonder and admiration of the bar. In defeat, especially, he is said to have been like a lion at bay, and on such occasions some one was likely to get hurt by his fierce intellectual assaults. An instance of his crushing manner in dealing with lying witnesses is related. He had cross-examined the witness at great length and finally dismissed him. Just as the witness was about to leave the stand Lockwood detained him with "One question more"; wrote a moment and then looked up and transfixed him with the question, "Would you believe yourself under oath?"

It is indeed remarkable how deep an impression Rufus A. Lockwood made upon the minds and memories of the pioneers during the short six years he spent at the California bar. In fact, every one who ever came in contact with him has imprinted on his mind a vivid picture of the man; of his facial expression, of his physical movements and of his original style, and a strong remembrance of his powerful voice, which, to use the language of Judge Moore, "was like the growl of a grizzly bear." Walking down the street the other day, I met J. H. Flickinger, who told me that of all the pioneers of California his recollection of Lockwood was perhaps the earliest and most pleasing. He was a fellow-passenger with Lockwood when he first came to California around the Horn in 1849. "For the first month out from New York Lockwood never left his cabin, but after that he began to mingle with the rest. Before the voyage was ended the passengers became aware of the fact that they had on board the most singular, brilliant and versatile genius they had ever known. The range of his reading and of his experience; his knowledge of human character; his command of language, of literature, and the infinite variety of his moods were a revelation to his shipmates. After the voyage was ended and during the whole of Lockwood's career in Cali-

fornia he retained his friendship for Mr. Flickinger, and whenever he was in San Jose was pleased to spend a while with his "shipmate" and live over again their mutual past.

Elias L. Beard, of San Jose Mission, was a long and strong friend of Lockwood. Beard was an aggressive character and was involved in lawsuits of various kinds in all of which he had Lockwood for his attorney. One time a fellow whose name has escaped immortality, sued Beard for slander and employed E. K. Sanford as his attorney. The case came on for trial before Judge Watson, with Lockwood for the defense. Sanford made his opening speech to the jury, and it was very flowery. He quoted elaborately from the poets as to the value of a man's character and the outrage of slanderous assaults upon it. "Who steals my purse steals trash, etc.," came in the climax, and Sanford sat down well pleased at his burst of oratory. Then Lockwood arose, and, addressing the jury, also took the subject of character for his theme. He dwelt upon the value of character more eloquently than his opponent, quoted again all of the poetic passages which Sanford had done, and adding to their number, built up his speech to the very summit of a splendid consummation and then capped it all with this anti-climax, which won his case. "Gentlemen of the jury, remembering all that I have said to you of the value of human character, I solemnly declare that if you will give a down-East Yankee a jack-knife and a cedar stick he'll whittle out a better character in five minutes than has ever been established yet in any court of justice."

Rufus A. Lockwood was once the defendant in an action brought by one named Harlan in our District Court, and involving the title to a piece of land adjacent to San Jose. Lockwood was his own lawyer and did not have a fool for a client, in spite of the old legal saw. The case turned upon the validity of a certain deed which made its appearance at the trial and was offered in evidence by the plaintiff. It appeared to be entirely in the handwriting of Lockwood and to convey the premises in question. If valid and so found by the court, Lockwood would have stood besmirched with having acted dishonorably toward Harlan. The case was hotly contested on both sides, and Lockwood's blood was up. When the deed was produced and offered in evidence Lockwood looked it over carefully and then arose in court, and in a voice of thunder declared it a forgery. William T. Wallace was attorney for the plaintiff, and seeing Elias L. Beard in the court-room, called him suddenly to the witness-stand to testify as to Lockwood's signature. Beard didn't want to testify against his friend, but after carefully examining the instrument he was obliged to swear that he believed it to be in Lockwood's handwriting. Lockwood cross-examined him as follows: "Elias, you think that I wrote that deed, do you?" "Yes, Rufus," reluctantly stammered Beard, "I think that's your handwriting." "Now, Elias," said Lockwood (who prided himself on his spelling), "if I was going to write a deed, do you think that I would spell 'indenture' with two tt's?" Beard hastily scanned the deed, and there, sure enough, was 'indenture' spelled with two tt's. "No, Rufus," said Beard, exultantly, "I don't believe you would, and I think this deed is a forgery." And so it proved to be, for after the case was ended it was discovered that a fellow who was staying at Harlan's house, and who was an expert penman and given to imitating handwriting, had written the deed.

The story of Lockwood's death on the ill-fated Central America recalls the manner of dying of another member of our early bar, of whom I have written—Freeman McKinney. When Henry A. Crabbe conceived his fatal filibustering expedition into Sonora in 1857 he attracted a number of brilliant but adventurous

characters to his company, and among these was Freeman McKinney. Doubtless the expedition was entered upon in good faith by many of Crabbe's followers, who were led to believe that an actual revolution was in progress in Sonora, and that a display of aid from the Americans would win the State for the United States as Texas and California had been won. Induced by this error they went to Sonora and there were overpowered by a superior force, and the survivors condemned to be shot. When Freeman McKinney was led out to execution and the file of soldiers stood ready to fire, McKinney saw a Mexican in the crowd whom he had known in California. Beckonng him to his side he inquired if he expected to return to San Jose. The Mexican answered "Yes," when McKinney drew himself up to his full height (a little over four feet) and said: "When you return to California tell the people of San Jose that Freeman McKinney died game!"

The other day in San Francisco William Mathews drew me aside from the rushing human tide on Montgomery street to tell me some stories in his elegant way, of our early bar. The tale I have just related of "Free" McKinney's fate was one of them. Here is another of Judge Redman, which is worth repeating: One day in Judge Redman's court, Colonel Stafford ("the Lord of Hardscrabble") arose to move the admission of a new member of the bar. It was Colonel A. C. Yates, who had recently arrived from the state of Texas, in the military history of which state he had distinguished himself and won the commission of colonel. The genial Stafford enlarged upon the attributes of his friend, Colonel Yates, and eloquently depicted his career. He then fumbled among a package of papers which Yates had given him for the latter's license to practice as an attorney of Texas (upon which his motion was based) and finally, as he thought, found it and gracefully handed it to the court. Judge Redman took the paper and opening it out read it over with growing though internal mirth. At length he looked up and with a smile said, "Colonel Stafford, you have made a misdeal, sir. This document purports to be a colonel's commission from the Republic of Texas to Mr. Yates. Deal again, Colonel Stafford, deal again before this court will be justified in granting your motion," and the Lord of Hardscrabble in much confusion "dealt again."

Still another story has been told of Judge Redman. One day as he sat in his court-room with his clerk, H. C. Melone, writing below him, J. Alexander Yoell entered. His business was with Melone, who was a large man of strong likes and dislikes, and of quick temper—a typical border character. Between himself and Mr. Yoell a misunderstanding occurred, which on Melone's part ripened at once into a row, and he pitched into Yoell. The Judge sat quietly viewing and enjoying the tussle and making no effort to stop it until some gentleman entered and separated the combatants. Then turning to the Judge, with some indignation, he said: "You're a pretty specimen of a Judge to sit there and permit a personal encounter to go on in your court." "My friend," said Judge Redman, calmly, "what could I do? The legislature in its wisdom has not seen fit to provide my court with a bailiff, and hence I could not order them into custody. The clerk, as you see, was engaged, and I could not have entered a fine; and if I had descended from the bench to interfere I would cease to be the Judge and would be no better than any other d——d fool in the court-room." I am told that when this yarn was told to Stephen J. Field of the Supreme Court of the United States, that eminent jurist laughingly declared that Judge Redman's position was correct.

It may be gathered from some of these sketches that the lawyers of our early

days did not always con their law books, either when out of court in the daytime, or between days when they burned the midnight oil. Nearly all of the pioneers of the bar played cards, and often enjoyed the game greater when the pot was a big one and the bets were high. Here is an incident of one of those heavy earthquakes which visited the Coast and struck terror to the hearts of its denizens during the fifties, and before the average man grew accustomed to "temblors." One day William T. Wallace, John H. Moore, J. A. Moultrie and a layman or two were having a quiet game in one of the adobes near the Court-House. The pot was large, the bets were made and ended, and a show-down was about to be made when the earthquake came. Everybody made for the street as earthquake-shaken people only can. After the danger was over, the players remembered their game and returned to the adobe. The "pot" was still there, but every player, save one, had lost his hand somewhere in the panic. That one was "Bill" Wallace, who, with a presence of mind which was characteristic, produced the cards he had clung to throughout the earthquake, and claimed the pot. The hand was a low one, but he dared the rest to show a higher, and when none of them could, Wallace raked the pot.

When Judge Redman resigned his office of County Judge in 1852, C. E. Allen was appointed to serve out his unexpired term, which he did with great credit to himself and to the court. After him came R. B. Buckner, who was elected in 1853. We all remember Judge Buckner and his quaint ways of dispensing justice from his bench as justice of the peace in modern days. On the old-time county bench he was much the same in method, as the following incident will illustrate: One party had leased a piece of land to another for a term, which ended, he removed from the land leaving behind him a quantity of compost, which later he tried to remove, but was prevented by the owner of the land. The tenant brought a replevin suit against his former landlord for possession of the compost, in Judge Buckner's court. The case dragged on while the lawyers disputed in briefs and arguments about the law of fixtures, and the principles governing the change of personal into real property. At last the actual trial came on, when the defendant proved that since the case was commenced his chickens had so scattered the compost that it had lost its identity and become mingled with the soil of his land. Judge Buckner chewed his invariable "quid" calmly until the time for pronouncing judgment came. He then rendered his decision as follows: "This case has been argued learnedly by the lawyers on both sides, who have drawn fine distinctions between personal and real property. The court does not, however, deem it necessary to draw any such nice distinctions, for the reason that the evidence shows that while the action has been pending the defendant's chickens have scattered the property in controversy beyond identification, and have thereby literally scratched the plaintiff's case out of court."

THE OLD THIRD DISTRICT COURT.

The first legislature of California, which met in the fall of 1849 in San Jose, provided the State with a judicial system, consisting of a Supreme Court and nine District Courts, which met in as many judicial districts throughout the State. The counties of Santa Clara, Contra Costa, Santa Cruz and Monterey constituted the Third Judicial District under this statute, and John H. Watson was appointed its Judge. Judge Watson was a man of considerable ability, but of not a very vast fund of legal knowledge. He it was who delivered the famous and humorous charge to the jury at Monterey in the case of Dean vs. McKinley, and which has heretofore been recorded. One day while the Judge was traveling from San

Jose to Santa Cruz (to hold court there) in company with several members of the bar of his district, among whom was R. F. Peckham, the latter began to poke fun at Judge Watson for his charge to the jury in the McKinley case. "Now, Peckham," said the Judge, "don't you think I do about as well as anyone else would who don't know any more law than I do?" "Before I can answer that question, Judge," answered Peckham, "I would have to ascertain just how much law you do know."

"Well, to tell you the truth, Peckham," said the Judge, "I don't know any, for I never read a law book in my life." "Well," laughed Peckham, "I must say that for a Judge who never read a law book you do remarkably well, but how do you manage to get along with your cases?" "I'll tell you the secret, Peckham," said Judge Watson; "I make use of two presumptions in the trial of my cases. When I have heard the evidence I first presume what the law ought to be to do justice between the parties, and after I have settled that presumption I next presume that the law is what it ought to be, and give judgment accordingly."

Here is another instance of Judge Watson's affection for presumptions. One day James M. Jones was arguing a case before Watson, which involved some proposition of the old Spanish law. Watson didn't understand Spanish, and hence Jones had to both read and translate the law which he claimed to sustain his case. Judge Watson didn't like the law which Jones was evolving from the Spanish text, and after listening awhile, said: "Mr. Jones, the court has no doubt that you are correctly translating that statute, and that it at one time was the Spanish law; but that statute is so absurd and unjust as applied to the facts of this case that the court is going to presume that the law you are citing has been repealed." Of course, such presumption was indisputable, and Jones lost his case.

This method of administering presumptive law was well enough in an era when law libraries were few and far between and when lawyers were even less learned in the law than was the court. But the great tide of population into California during the early fifties brought with it as good lawyers as the older states could produce, and their law books soon followed them. The result was that the Supreme Court found very frequent cause for reversal of the Judges of the District Court. In this connection a good story may be told on the Fourth District Court, which was one of those most frequently reversed. One day Delos Lake, Esq., arose in the Supreme Court to argue an appeal. "May it please the Court," he said, "this is an action in which we have appealed from a judgment of the Fourth District Court; but your Honors, *we have other grounds of error.*"

The term of Judge Watson's service on the District Bench was ended in 1851 by his sudden resignation and return to the practice of the law. Judge Moore has supplied me with the reason for his resignation. It seems that during 1851 there were a great many criminal trials in both the District and County courts, principally for grand larceny. John H. Moore was then district attorney, and being a young, vigorous and popular attorney, he gained many convictions. Judge Watson saw this criminal business growing in his court, and saw also Moore's success. He had some abilities as an orator, had the Judge, and he conceived the idea that he could make a fortune defending criminals. So one day he resigned and at once opened a law office. Meeting Moore soon afterward he told him of his plans and rather boastingly informed the young district attorney that the day of his success as a prosecutor was past. Moore advised him not to be too confident until he had won a case or two. The very next case which came up for trial was that of one Basquiz for horse stealing. The penalty for this offense was at that

time capital unless the jury fixed a lesser punishment, but District Attorney Moore, not believing in the harsh law, had never yet asked a jury to permit the extreme penalty. When Judge Watson, however, volunteered to defend this horse-thief, Moore told him tnat he had a bad case and that his client might hang. The Judge, however, was confident of his power before a jury, and the case came on. Upon the argument Judge Watson spread himself in a wild flight of oratory, but all in vain, for the jury stayed with Moore and brought in a prompt verdict for conviction without limitation, and Judge Watson's first client was hanged.

Upon the retirement of Judge Watson, Craven P. Hester, Esq., was appointed in his stead. Judge Hester was a native of Indiana, where he had studied law and practiced it for some years before coming to San Jose. He brought to the bar of San Jose a fine reputation as a lawyer and as a man of high sense of professional and personal honor. His appointment in 1859 to Judge Watson's vacant seat gave general satisfaction and when the general election came a year later he was chosen to serve for a term of six years as District Judge. A great many important cases were tried before Judge Hester and the ablest lawyers in the State of California practiced in his court. The sessions of the District Court were held in the State House until it was destroyed by fire in 1853, when the county provided them with quarters in the frame building which was recently removed from the southeast corner of Second and San Fernando streets. There for several years Judge Hester held his court. There occasionally came such lawyers as Lockwood and Randolph and Baker and other brilliant men from the bar of the State.

When the judicial term of Judge Hester expired he was not re-elected, and as I am told, for a peculiar reason. In the district of Judge Hester there were many lawyers of several degrees of merit. The leader of the San Jose bar was William T. Wallace during the fifties. The leader of the Monterey bar was D. R. Ashley, and of the Santa Cruz bar was R. F. Peckham during the same period. This trio of lawyers each worked hard at their cases, tried them well, and in consequence, were very successful each at his own bar. Their success made other lawyers of less studious habits jealous, and as the time for another election came on, they spread the campaign rumor that this trio of lawyers "owned" Judge Hester and that he always decided their way. The opposition nominated Samuel Bell McKee upon this issue and succeeded in electing him. Accordingly Judge McKee became District Judge in 1858, and remained so until the change in the district made in 1872, by which the old Third with some variations became the Twentieth Judicial District and David Belden, Esq., was elected as Judge.

The year 1872 marks the opening of a new era in the history of the bench and bar of California. The codes were in that year adopted and more settled forms of procedure began to prevail. The twenty-six years which intervened between the American occupation and that date belong to one epoch; the twenty-eight years which have passed since the adoption of the codes, form another. With the latter it is not the scope or purpose of this article to deal. The writer of this anecdotal sketch of the Early Bench and Bar has felt himself reasonably secure behind the mists of tradition, and he deems it the part of wisdom to remain so and not tempt contradiction by entering upon the recital of veracious tales of existing courts or of many living members of the profession to which he has the honor to belong.

——*JOHN E. RICHARDS.*

San Jose, Cal.

COMPLETE LIST OF
CALIFORNIA LAW BOOKS

CALIFORNIA LAW BOOKS

COMPLETE LIST

The following is a list of all law books that have been produced by California authors and compilers, and published within the State.

It has been prepared for this History by Mr. F. P. Stone, President of Bancroft-Whitney Company, from his records, the only ones that exist on this subject.

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NATHAN NEWMARK.

Nathan Newmark was born in New York city, June 3, 1853. Coming to California with his parents in 1856, he lived in Sacramento until the flood of 1861-62 drove him to San Francisco, where he has resided ever since, with the exception of two years spent at Cambridge, Massachusetts, while attending the Harvard Law School, and a visit to Europe.

Mr. Newmark annotated the California Code of Civil Procedure in 1880, and the California Political Code in 1881. In 1887 he issued a work on Sales, and in 1888 a work on Bank Deposits. He has also contributed to the American and English Encyclopædia of Law, and to the Central Law Journal and other legal periodicals. He is a graduate of the San Francisco Boys' High School and of the University of California. He was admitted to the bar in 1875.

Devoted to his special province, Mr. Newmark passes his time in the great Law Library in the San Francisco City Hall. We had lost sight of him for a time, pursuing his quiet but industrious and important work as a law writer, but he comes into most honorable view just as we close our History—too late, indeed, to be placed in the general array of our subjects, but after all it is most fitting to name him here, in connection with the productions of his and kindred legal minds.

Stephen M. White

In Memoriam

Stephen M. White

Stephen M. White ✶ In Memoriam

In our sketch of Mr. White, on page 642, he is referred to as "perhaps the most eminent of the State's native sons." Since it was written his career has ended, and the general judgment of the bar and the press has more than confirmed the estimate made while he was yet with us. We placed him among our "Strong Men of Today," and Fame will keep him among the strongest men in our history through all time.

Mr. White died at his home in Los Angeles, on the 21st of February, 1901. He had completed his forty-eighth year on January 19. On the morning following his death the leading paper of Southern California, which was always opposed to Mr. White in politics, but whose proprietor was his personal friend and professional client, declared him to be "the greatest man the State has produced in the half century of its existence." The language was not stronger than that employed by many other journals, of all shades of political opinion, and by bar leaders in memorial council.

The legislature was in session at the time of Mr. White's death. Both houses took appropriate action. In the senate Mr. Ashe offered a joint resolution providing for the appointment of a committee of three from the senate and five from the assembly, to include the president and speaker, to attend the funeral. A like resolution was introduced in the assembly by Mr. Fisk. Both resolutions were adopted. Memorial resolutions were also adopted by both houses, the authors being Senator Sims, of Sonoma, and Assemblyman Grove L. Johnson, of Sacramento. Those gentleman made impressive speeches on the occasion. Feeling tributes were also paid by Senators Simpson, of Los Angeles, and Shortridge, of Santa Clara, and Assemblymen James and Melick of Los Angeles, McBeth and Schlesinger, of San Francisco, and Radcliff, of Santa Cruz. The assembly adjourned under Hon. Grove L. Johnson's resolution, and the senate adjourned pursuant to a resolution offered by Hon. John F. Davis, of Amador.

The joint committee of the legislature which attended the funeral was composed of Senators Ashe, Sims and Curtin, and Speaker Pendleton, and Assemblymen Anderson, Melick, James, Cowan and Guilfoyle.

The ex-Senator's funeral ceremonies were conducted at the Catholic Cathedral in Los Angeles, in the presence of a larger body of representative and distinguished men than had ever assembled in the State on a like occasion. It included the Governor of the State, Hon. Henry T. Gage; the mayor of San Francisco, Hon. James D. Phelan; Speaker Pendleton of the assembly, Hon. James G. Maguire, members of both branches of the legislature then in session, the mayor of Los Angeles, Hon. M. P. Snyder, and leading lawyers and other prominent men from all parts of the State. The active pallbearers were the directors of the Newman Club of Los Angeles, to which Mr. White belonged, namely: John A. Francis (president), James C. Kays, L. A. Grant, John F. Fay, Jr., R. F. Del Valle, I. B. Dockweiler, Joseph Scott and H. C. Dillon. The honorary pallbearers, among whose names will be recognized the first men of the commonwealth, residents of various sections, were the following: General H. G. Otis and ex-Senator Edward Murphy, Jr., of New York, who served for six years in the senate with Mr. White; Governor Henry T. Gage, Chief Justice Beatty of the Supreme Court and six associate justices, Hon. E. M. Ross, Hon. Olin Wellborn, Hon. Lucien Shaw, Hon. B. N. Smith, Hon. M. T. Allen, Hon. Waldo York, Hon. D. K. Trask, Hon. N. P. Conrey, Hon. R. J. Waters, Hon. James McLachlan, Hon. James D. Phelan, Hon. James G. Maguire, Hon. W. F. Fitzgerald, Hon. John S. Chapman, Hon. James D. Bicknell, Mayor M. P. Snyder, P. W. Powers, John T. Gaffey, I. H. Polk, Charles Prager, W. W. Foote, D. M. Delmas, John Garber, H. W. Hellman, M. J. Newmark, K. Cohn, Eugene Germain, Joseph Mesmer, J. M. Elliott, W. C. Patterson, J. E. Plater, John R. Mathews, Major H. T. Lee, W. H. Perry, J. W. Mitchell,

William Pridham, Charles Forman, John Kenealy, Richard Dillon, D. M. McGarry, Hon. W. A. Cheney, Hon. J. W .McKinley, O. W. Childs, J. O. Koepfli, Henry T. Hazard, John Crimmin, W. H. Workman, I. N. Van Nuys, A. J. King, Horace Bell, J. A. Redman, W. R. Rowland, R. Egan, John Foster, W. D. Gould, T. L. Winder, Judge R. B. Carpenter, Hugh L. Macneil, ex-Senator Cornelius Cole, W. L. Hardison, C. White Mortimer, Victor Ponet, A. Fusenot, M. Esternaux, J. Castruccio, General Andrade, T. L. Duque, A. M. Stephens, Jonathan R. Scott, A. W. Hutton, Ben Goodrich, R. H. F. Variel, F. P. Flint, Hon. W. A. Cheney, Hon. J. W. McKinley, B. W. Lee, S. O. Houghton, Charles Silent and J. A. Anderson Jr.; J. S. Slauson, Kaspare Cohn, F. Q. Story and E. F. C. Klokke; Dr. John R. Haynes, Dr. Walter Lindley, Dr. E. A. Bryant, W. R. Burke, Frank Garret, E. F. Loud, W. A. Clark, J. A. Barham, W. H. Alford, R. J. Wilson, Charles Monroe, J. B. Sproule, A. F. Jones, Frank McLaughlin, Frank Flint, Frank R. Finlayson, John P. Irish, Gavin McNab, H. B. Gillis, W. R. Radcliffe, J. H. Farraher, J. J. Dwyer, J. F. Sullivan, J. A. Filcher. Edward Maslini, Walter J. Trask, Fred Cox, J. H. Sewall, James H. Wilkins, T. W. H. Shanahan, H. C. Gesford, T. B. Bond, Ed. E. Leake, E. L. Coleman, W. V. Gaffey, W. R. Jacobs, Thomas Flint, Jr., John Curtin, B. F. Langford, D. A. Ostrom, M. F. Tarpey, R. B. Canfield, Marion Cannon, Abbot Kinney, George H. Fox, C. E. Thom, R. Porter Ashe, J. Ross Clark, T. E. Gibbon, Willard Stimson, Frank H. Gould, J. V. Coleman, Frank J. Moffatt, R. P. Troy, General P. W. Murphy, J. A. Graves, Fred Harkness, W. S. Leake, Dr. W. P. Mathews, C. B. Younger, W. H. Spurgeon, Oscar Trippett, Byron Waters, J. Downey Harvey, George S. Patton, Peter D. Martin, John McGonigle, Jarrett T. Richards, William Graves, John A. Hicks, B. D. Murphy, G. G. Goucher. J. C. Sims, E. H. Hamilton, N. A. Covarrubias, Max Popper, General J. W. B. Montgomery, Dr. Joseph Kurtz, C. F. Heinzman, C. F. A. Last, J. D. Spreckels, M. H. de Young, W. R. Hearst, T. J. Flynn, E. B. Pond, E. A. Puschell, Frank J. Heney, Dr. H. Nadeau, A. B. Butler, Walter S. Moore, Garret W. McEnerney, James H. O'Brien, J. J. Carrillo, J. B. Van Demey, A. T. Spotts, John P. Dunn, Julius Sieckes, W. D. English, T. J. Clunie, Warren English, Victor H. Metcalf, W. W. Bowers, S. M. Shortridge, George A. Knight, W. H. L. Barnes, J. C. Campbell, E. S. Pillsbury, W. E. Dargie, Judge J. V. Coffey, Judge W. W. Morrow, Judge W. D. Gilbert, Judge J. J. de Haven, J. S. Spear, H. W. Frank, F. M. Coulter, Niles Pease, H. Jevne, J. Baruch, H. C. Lichtenberger, W. J. Variel, R. J. Dillon, L. E. Aubrey, E. A. Meserve, Dr. Carl Kurtz, M. H. Newmark, Frederick T. Griffith, W. G. Hunt, John S. Thayer, J. D. Hooker, J. A. Lothian, L. C. Scheller, Will Bishop and J. W. Lynch.

The mass was celebrated by Bishop George Montgomery. The sermon, a very practical yet moving one, was preached by Bishop Horstmann of Cleveland, Ohio, who, like ex-U. S. Senator Murphy of New York, and some others present, was on a visit to Los Angeles.

On the day of the funeral the flags were at halfmast on the City Halls of San Francisco and Los Angeles. In one city he was born, in the other he died. The boards of supervisors of both cities passed appropriate resolutions on the subject of his loss to the State.

On the day of his death Mayor Snyder of Los Angeles, with commendable promptness, made public suggestion of a monument to the departed leader, in the following proclamation:

"Mayor's Office, Los Angeles, Cal.,
Feb. 21, 1901.

"With profound sorrow the mayor of the city of Los Angeles announces the death of our distinguished fellow townsman, the Hon. Stephen Mallory White, which occurred at his residence early this morning.

"The eminent station of the deceased, his high character, his magnificent attainments, his long and extraordinary career in the public service, his unfailing devotion to the cause of the people of his native state and his splendid ability which he contributed to the discharge of every duty, stand conspicuous and are indelibly impressed on the hearts and affections of all.

"Deeming it highly proper that the citizens of our municipality should take the initiative in perpetuating the memory of California's greatest son, I suggest that immediate steps be taken to erect, at some suitable place within our city, an appropriate monument, commemorative of Senator White's public services, the cost thereof to be defrayed by popular subscription, the voluntary offering of a grateful people.

"As a mark of respect to the memory of this eminent and faithful public servant, I request that the city hall be closed on Saturday, February 23, the day of his obsequies, and that the city hall flag be placed at halfmast and so remain until after his funeral.

"M. P. SNYDER,
"Mayor."

Mayor Phelan of San Francisco, with characteristic liberality and public spirit, made the splendid subscription of $2500 to the monument fund before returning to his home, being the first subscriber. Hon. Thomas R. Bard, Mr. White's successor in the United States senate, subscribed $500. Mr. I. W. Hellman, the San Francisco and Los Angeles banker, subscribed $250, and one of his banks, the Farmers and Merchants' Bank of Los Angeles, a like sum. Mrs. Eleanor Martin of San Francisco subscribed the same amount, and when this History was closed, at the end of March, 1001, the full sum desired, $25,000, had nearly all been vouched for. The monument will be one worthy of the man and the State, and will be erected in some distinguished spot in Los Angeles city.

Mr. White's will was written four days before his death, on a fly-leaf torn from a book, in his own hand, and was in full as follows:

Los Angeles, Feb. 17, 1901.—I hereby will, devise and bequeath to my beloved wife, Hortense, all my property. I appoint her executrix of this my last will without bonds. I recognize my children, William, Hortense, Estelle and Gerald G. I revoke all wills heretofore made by me.

STEPHEN M. WHITE.

The widow, through her attorneys, Bicknell, Gibson & Trask, petitioned for letters of administration.

The petition showed that the deceased left property valued at about $118,000. The real property comprised an interest in 280 acres of land, valued at $4000; lot in the O. W. Childs tract, $5000; two lots in East Los Angeles, $800; five lots in the Lewis tract, $500; lot in the Dana tract, $500; two lots in Mrs. Gleason's subdivision, $200; an individual one-half interest in 527 acres in the Repetto ranch, $20,000; interest in 171 feet fronting on Main street, between Third and Fourth, known as the J. G. Downey homestead, $30,000; interest in lands in the Leonis estate; five lots in the Washington Gardens tract, $1850; lots in the Wolfskill Orchard tract, $1000; and three lots in the Morris Vineyard tract, $1250.

The personal property included outstanding accounts, $5000; law library, $4000; private library, $500; other personal property, $1500; stock in the Title, Insurance and Trust Company, and insurance policies aggregating $42,000.

The heirs are the widow; William White, aged sixteen; Hortense White, aged thirteen; Estelle White, aged fourteen, and Gerald G. White, aged five.

MEMORIAL OF THE BAR.

On Thursday, February 28, 1901, over one hundred members of the Los Angeles Bar Association met, and heard the reading by their president, Hon. R. H. F. Variel, of the report of the committee before appointed to draft resolutions on the subject of the life and death of their late eminent brother. The report was listened to with intense interest, and was unanimously adopted. It is as follows:

"IN MEMORIAM.

"The symbol of the broken column, typifying the untimely death of a strong man stricken down in the zenith of his power and fame, in the midst of his splendid usefulness, was never more strikingly applicable than in the death of the distinguished man who has just passed away.

"Never since the golden sun of the Occident flamed bright and beckoning upon the flag of our country has any of her notable sons attained to the commanding eminence which is with common thought accorded to the character and achievements of Stephen Mallory White.

"The stock from which he sprang has produced many eminent men. California, too, can boast of a long line of illustrious dead. But none of these may justly claim a better right than he to enduring fame—to have his name emblazoned in letters of ineffaceable light upon the very foundations of the capitol itself. And in our State pantheon his must ever be an honored place.

"Born and reared, not in poverty, and yet with none of the advantitious aids of fortune or of inherited wealth or position, he achieved by force of his indomitable genius and his rugged, masterful strength of character, and within those early years when many men of genius are yet struggling for recognition, an honorable career that well may challenge the admiration of the world.

"We first behold him a young attorney at this bar, where he took his modest place, an untried, unknown, unheralded man, in April, 1875. Not long did he remain obscure, for soon we behold him discharging with brilliant ability and success the duties of district attorney of this county.

"And then a new star rose rapidly in the West. Richly endowed with all those gifts which go to make the successful lawyer, the great orator, he sought with the most untiring diligence and effort and the most exhaustive labor to perfect his superb powers. And soon he became known as a finished lawyer, a powerful advocate, a forensic gladiator of the first ability.

"We next behold him valiantly battling, with not less marked distinction, on the uncertain field of politics; and successively he rose to preside over a state and then a national convention of his party, to be a state senator, a lieuteant-governor, and then a senator of the United States.

"In all these large public relations he always rose to the demands of every occasion and never failed to wield a powerful influence for what was right and just, according to his own convictions; and even from his opponents he always commanded the most profound attention and respect.

"His most eminent characteristic lay in his power to influence deliberative bodies, and he reached the highest expression of this great gift during his career in the United States senate. His record there is part of the imperishable history of that illustrious body, and not soon will the renown which he there achieved be covered by the silence of oblivion.

"In politics he early espoused the Democratic faith, and was always loyal to his professions. His views upon great national questions, however, were never unduly colored by partisan prejudice, but were rather tempered by a wise and calm conservatism that always gave his counsel great weight. On more than one occasion he led a forlorn hope to certain defeat, rather than surrender his convictions. He was the friend of the people in his endeavors to preserve unimpaired the purity of the ballot and to compel the practice of clean methods in politics and legislation. While he was nowise hostile to, or prejudiced against, organized capital, or wealth in any form, nevertheless he firmly believed, above all things, in the supremacy of the law, and the right of

the people to govern themselves according to the will of the majority when constitutionally expressed, and especially in the right of every citizen to pursue his own true and substantial happiness so far as consistent with the equal and just rights of others before the law. He was the steadfast foe of fraud, force and violence in whatever guise presented—whether expressed through the machinations of the political machine, or the corrupt or insidious use of wealth or place, or whether manifested through what he considered the insolent aggressions of great corporate influence or the unjustifiable extensions of the large powers of government.

"As an orator at the bar, before a jury, on the stump, before a convention, or in the halls of legislation, he was matchless—irresistible. With a fine-toned, sympathetic, far-reaching voice that ever rang true and sincere, and speaking ever from profound convictions that were the result of earnest thought and study, he always commanded large and appreciative audiences.

"He was a man of great public spirit, and he believed that public office was a public trust; and a leading thought with him always, in every public station, and, indeed, throughout his private career, was the general welfare of the public. Not soon will the people of the West find another such champion to speak for them, or who will pour forth the rich treasures of his mind in such unstinted measure, or with such force or power, or such disregard of self.

"But while we may appropriately dwell with admiration upon those striking qualities which enabled him to achieve success on the larger fields of action, it is of more consequence for us to record that our departed brother was above all a man of the highest integrity and honor in all the relations of life. He never stooped to win success, place or power by any indirection, he never corrupted and he was incorruptible. He was sunny, genial, affable, approachable—a loyal, generous friend; a courteous, honorable foe.

"In his intercourse with his brethren of the bar he was manly, kind and considerate. Before the court he was modest and courteous, but withal marked by a dignity that stamped him with the seal of greatness. He always sought to be right, he always reasoned honestly, and never did he willfully pervert his great powers before either judge or jury in the endeavor to deceive the one or mislead the other that injustice or wrong might knowingly be done.

"It is to be deplored that more transcripts of his many great speeches have not been preserved. What was greatest in them could not be written, and has passed away with the man. But they are not forgotten, and the recollection of their striking brilliance will long be cherished and preserved, with the fragrant memory of his many virtues as lawyer and man, as citizen and friend, as among the most valued traditions of this bar.

"The same fine spirit of duty, chivalry, and devotion which marked his public and professional career adorned his private life and beautified his domestic relations.

"To his family he leaves the priceless memory of his devotion and protection, to his friends the recollection of his loyalty and truth, to his brethren of the bar an example of professional achievement worthy of all imitation, to his home and country the heritage of many good works wrought in their behalf, and to all struggling, ambitious young men everywhere he leaves the record of a career which unmistakably demonstrates the mighty truth that a deserving, capable man may yet confidently aspire in this age, mercenary though it be, and that he can surely win the highest professional and political distinction without departing from the path of rectitude or the practice of common honesty.

"To use his own last words, 'The evidence is all in, the case is submitted.'

"Great lawyer, great man, great citizen, great soul, farewell!

"Wherefore, brethren of the bar of Los Angeles, your committee, appointed in general bar meeting assembled, desiring only to express a true estimate of the character and worth of our departed brother without attempting any detailed review of the events of his notable life work, have prepared this memorial and submit it for your approval, with the suggestion that it be further noted so as to be a part of this record, that our departed brother, Stephen Mallory White, was born January 19, 1853, at San Francisco, State of California, and that he died February 21, 1901, in the city of Los Angeles.

"We recommend that an engrossed and signed copy of this memorial be furnished to his family and to his mother; that copies be given to the press, and that a copy be presented to each of the Federal and Superior Courts in this city by members of the bar to be selected by your honorable body, with the request that it be transcribed at length upon the minutes; and that copies be furnished to the State Supreme Court, the State senate and to the senate of the United States.

"HENRY T. GAGE,
"Governor of California.

"ERSKINE M. ROSS,
"United States Circuit Judge, Ninth Circuit.

"OLIN WELLBORN,
"United States District Judge, Southern District California.

"LUCIEN SHAW,
"Judge of Superior Court, Los Angeles county.

JOHN D. BICKNELL,
J. S. CHAPMAN,
GEORGE J. DENIS,
R. F. DEL VALLE,
ROBERT N. BULLA,
CHARLES MONROE,
R. H. F. VARIEL,
Members of the Bar.

Los Angeles, Cal., Feb. 28, 1901.

After the reading of the memorial, Judge B. N. Smith spoke feelingly of the deceased, recalling many acts of kindness, of upright-

ness and honesty, showing the grand nature of the man and his fitness to hold the honored places he had been called to fill. Hon. Will D. Gould, as a lifelong friend of the deceased, paid a touching tribute to the memory of his departed friend.

Hon. John W. Mitchell, who is sketched in this History (as are nearly every one of the other gentlemen above named) closed the meeting with a eulogy of Mr. White, which a leading journal declared to be "beautiful, grand, and at the same time heartfelt and touching."

The best public speakers, including the orator, Delmas, at meetings in various parts of the State, made the mournful occasion the subject of their most impressive utterances. The *Herald*, of Los Angeles, published this from the pen of John S. Chapman, the bar leader of that city, under the caption, "The Tribute of a Friend":

"When death claimed Senator White it undoubtedly extinguished the most brilliant genius which the State of California now knows, or perhaps ever knew. The nation, indeed, has furnished few who were his equals and scarce any superior. Other men, doubtless, could be named who might rival him in some particular talents or departments of intelligence, but another possessing a mind equipped for all occasions, possessing all of his qualities—tact, judgment, skill, logic, rhetoric, information and learning in every department of life—and in an equal degree, we have never met. He was fitted for the council or the field—profound in meditation, irresistible in action. And with his great mental qualities, he possessed a remarkable amiability of temper, a fund of humor, a generous and genial nature—qualities not always associated with genius, but were in him as excellent and as rare, almost, as his powers of mind and versatility of talents."

The faculty of the State Normal School of Los Angeles, by E. T. Pierce, president, and Melville Dozier, secretary, issued a testimonial, which shed light, as the *Express* well observed, on a less understood and less appreciated side of Mr. White's character.

"The cause of education in general," we quote from this testimonial, "and the Normal School in particular, found in Senator White both an earnest and an intelligent friend and advocate. Himself a firm believer in public enlightenment, and a zealous advocate of civil liberty, he recognized the one as the outgrowth of the other, and each dependent upon the other for its very existence, and his labors in connection with educational questions were ever in harmony with this high ideal of popular instruction as the basis of popular independence."

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*After the notice of Mr. Gear on page 1021 had been printed, he was nominated by the President to be Second Judge of the Circuit Court of the First Circuit of the Territory of Hawaii, and the nomination was confirmed by the United States Senate on the 2d of March, 1901.—Editor.

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